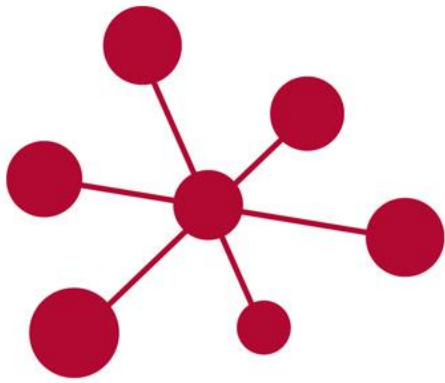


INQUIRY INTO THE ADEQUACY OF YOUTH DIVERSIONARY PROGRAMS IN NSW

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public interest
ADVOCACY CENTRE

NSW Parliamentary Inquiry into the Adequacy of Youth Diversion Programs

5 February 2018

1. Introduction

1.1 The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in New South Wales. Established in 1982, PIAC tackles difficult issues that have a significant impact upon disadvantaged and marginalised people. We ensure basic rights are enjoyed across the community through legal assistance and litigation, public policy development, communication and training.

Our work addresses issues such as:

- homelessness;
- access for people with disability to basic services like public transport, education and online services;
- Indigenous disadvantage;
- discrimination against people with mental health conditions;
- access to energy and water for low-income and vulnerable consumers;
- the exercise of police power;
- the rights of people in detention, including the right to proper medical care; and
- government accountability, including freedom of information.

1.2 PIAC's work on youth diversion and policing

PIAC has consistently been involved in issues surrounding police accountability and the exercise of police powers, through both strategic litigation and policy advocacy. This includes an emphasis of the impact of police powers on young people, and especially on Aboriginal and Torres Strait Islander young people.

Specifically, PIAC has been a leading member of the Youth Justice Coalition and contributed to the October report examining the NSW Police Suspect Target Management Plan.¹

In the past six months, PIAC has also contributed to the Australian Law Reform Commission inquiry into Incarceration Rates for Aboriginal and Torres Strait Islander People.²

Both of these documents inform this submission, and have been included as Attachments A and B respectively.

This submission also draws on the wide range of other relevant work we undertake through our litigation practice, Indigenous Justice Project and policy and law reform efforts.

¹ Vicki Sentas and Camilla Pandolfini, *Policing Young People in NSW: A study of the Suspect Target Management Plan*, 25 October 2017, available at: <https://www.piac.asn.au/wp-content/uploads/2017/10/17.10.25-YJC-STMP-Report.pdf> accessed on 2 February 2018.

² PIAC, *Submission to the Australian Law Reform Commission Inquiry re Incarceration Rates of Aboriginal and Torres Strait Islander People*, 31 August 2017, available at: <https://www.piac.asn.au/wp-content/uploads/2017/09/17.08.31-PIAC-Submission-to-ALRC-re-Indigenous-Incarceration-Final.pdf> accessed on 2 February 2018.

2. Recommendations

Recommendation 1

NSW Police discontinue applying the STMP to children under 18. Children suspected of being at medium or high risk of offending should be considered for evidence-based prevention programs that address the causes of reoffending (such as through Youth on Track, Police Citizens Youth Clubs NSW (PCYC) or locally based programs developed in accordance with Just Reinvest NSW), rather than placement on an STMP.

Recommendation 2

- *Recommendation 87 of the RCIADIC should be implemented in full.*
- *Powers of arrest (such as those found in s 99 of LEPPRA) should expressly provide that arrest and detention must be an option of last resort.*
- *Police policies and procedures (such as those contained in the NSW Police Force Handbook and/or NSW Police Force Code of Conduct for CRIME) should contain clear guidance to police to the effect that arrest is to be used as a measure of last resort and to encourage diversion of suspected offenders away from the criminal justice system including by use of court attendance notices where appropriate.*
- *Police policies and procedures (such as those contained in the NSW Police Force Handbook and/or NSW Police Force Code of Conduct for CRIME) should expressly state that detention should be as a last resort and for the shortest period of time (in line with Convention on the Rights of the Child).*
- *That legislation governing criminal procedures (which in NSW includes the provisions of LEPPRA, the Children (Criminal Proceedings) Act, the Young Offenders Act and the Bail Act) should be summarised in internal police policies and procedures (including the NSW Police Force Handbook and/or NSW Police Force Code of Conduct for CRIME) to (i) reinforce the message that arrest and detention should be a last resort and (ii) provide clear guidance as to the procedure police officers must follow, in accordance with law, when confronted with suspected offending by young people.*

Recommendation 3

- *Bail laws should expressly provide that arrest for breach of bail is a sanction of last resort (including in section 77 of the NSW Bail Act).*
- *Bail laws should expressly provide that police officers must have regard to a person's age when determining what action should be taken for breach of bail (again including in section 77 of the NSW Bail Act)*
- *In consultation with community, consideration should be given to further trials of the 'breach reduction strategy'³ in communities with large populations of Aboriginal and Torres Strait Islander people.*

³ Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, Discussion Paper 84, July 2017, 2.69.

Recommendation 4

Proactive policing targets should not be set for activities undertaken by NSW Police in relation to people under 18, and the numbers of activities undertaken by NSW Police in relation to people under 18 should be excluded from overall proactive policing target data.

Recommendation 5

The criminal age of responsibility should be set to at least 12, in line with the recommendation by the Royal Commission into the Protection and Detention of Children in the Northern Territory, with consideration to setting it at 14.

Recommendation 6

Young people under the age of 14 years should not be held on remand, and should not be ordered to serve a term of detention, unless they:

- Have been convicted of a serious and violent crime against the person*
- Present a serious risk to the community, and*
- The sentence is approved by the President of the Children's Court of NSW.*

3. Youth Diversion in NSW: Select Issues

In this submission, PIAC will concentrate on a small number of issues concerning youth diversion in NSW, based on our past work and particular areas of expertise, rather than attempting to address the broad scope of this inquiry.

Specifically, we will focus on ‘the way in which youth diversionary efforts work with... the Police’ (term of reference a) and ‘bail issues’ (term of reference f), as well as suggesting law reforms to minimise contact between young people and the criminal justice system.

PIAC is particularly concerned that police powers are being exercised in ways that undermine, rather than support, youth diversionary efforts.

3.1 Suspect Target Management Plan

One of the key issues in terms of youth diversion in NSW is the impact of the Suspect Target Management Plan, and other forms of ‘proactive policing’, on youth diversion outcomes.

This is an issue that PIAC has examined closely, through its participation in the Youth Justice Coalition, including contributing to the October 2017 publication of the report ‘Policing Young People in NSW: A study of the Suspect Target Management Plan’ (see [Attachment A](#)).

While some information about the STMP has not been disclosed by NSW Police and the NSW Government more generally, this study was produced using the following information:⁴

- i) available quantitative data on program participants
- ii) de-identified case studies drawn from interviews with lawyers
- iii) publicly available guidance given to police on STMP operational procedures and
- iv) analysis of case law and legislation.

Based on this information, the report contained a range of preliminary findings, including:⁵

- Disproportionate use against young people and Aboriginal people: Data shows the STMP disproportionately targets young people, particularly Aboriginal and Torres Strait Islander people, and has been used against children as young as ten.

[Subsequent to the report’s publication, NSW Police Commissioner Mick Fuller confirmed that approximately 55% of people subject to an STMP are Aboriginal or Torres Strait Islander, and that the youngest person on an STMP was nine years old].⁶

- Patterns of ‘oppressive policing’ that may be damaging relationships between police and young people: Young people targeted on the STMP experience a pattern of repeated contact with police

⁴ Vicki Sentas and Camilla Pandolfini, *Policing Young People in NSW: A study of the Suspect Target Management Plan*, 25 October 2017, p1, available at: <https://www.piac.asn.au/wp-content/uploads/2017/10/17.10.25-YJC-STMP-Report.pdf>

⁵ Ibid.

⁶ Michael McGowan, ‘More than 50% of those on secret NSW police blacklist are Aboriginal’, *Guardian Australia*, 11 November 2017, available at: <https://www.theguardian.com/australia-news/2017/nov/11/more-than-50-of-those-on-secretive-nsw-police-blacklist-are-aboriginal> accessed on 2 February 2018.

in confrontational circumstances such as through stop and search, move on directions and regular home visits. The STMP risks damaging relationships between young people and the police. Young people, their families or legal representatives are rarely aware of criteria used to add or remove people from the STMP. As the case studies show, young people experience the STMP as a pattern of oppressive, unjust policing.

- Increasing young people's costly contact with the criminal justice system and no observable impact on crime prevention: The STMP has the effect of increasing vulnerable young people's contact with the criminal justice system. Application of the STMP can be seen to undermine key objectives of the NSW youth criminal justice system, including diversion, rehabilitation and therapeutic justice. The research has identified several instances where Aboriginal young people on Youth Koori Court therapeutic programs have had their rehabilitation compromised by remaining on the STMP. There is no publicly available evidence that the STMP reduces youth crime.

Based on case studies discussed in the Report, it was found that:⁷

The STMP has particularly concerning negative impacts for Aboriginal and Torres Strait Islander young people who experience intensive monitoring and over-policing. The STMP can generate and compound poor police-community relations and undermine well-being for many Aboriginal and Torres Strait Islander youth. The STMP contributes to the stigmatisation and criminalisation of Aboriginal and Torres Strait Islander young people and furthers their disproportionate contact with police. The STMP also disrupts family relations where a young person is living with their family, and is subject to repeated visits by police at their home.

Of particular concern was the finding of the report that:⁸

Several Aboriginal youth appear to have been either placed on an STMP, or are receiving STMP like levels of attention, whilst being subject to Youth Koori Court Programs... Young people who experience targeted policing, whether because of the STMP or not, are finding participation in Youth Koori Court Programs difficult.

This seems to subvert the primary purpose of the Youth Koori Court, and similar programs focusing on diverting young people from involvement in the criminal justice system. Instead, the STMP appears to increase contact between NSW Police and young Aboriginal and Torres Strait Islander people.

Based on their analysis of case studies, and other evidence, the report also examined the interaction between the STMP and the diversionary principles of the *Young Offenders Act 1997* (NSW) and concluded that:⁹

⁷ Vicki Sentas and Camilla Pandolfini, *Policing Young People in NSW: A study of the Suspect Target Management Plan*, 25 October 2017, p21, available at: <https://www.piac.asn.au/wp-content/uploads/2017/10/17.10.25-YJC-STMP-Report.pdf>

⁸ Vicki Sentas and Camilla Pandolfini, *Policing Young People in NSW: A study of the Suspect Target Management Plan*, 25 October 2017, p32, available at: <https://www.piac.asn.au/wp-content/uploads/2017/10/17.10.25-YJC-STMP-Report.pdf>

⁹ Vicki Sentas and Camilla Pandolfini, *Policing Young People in NSW: A study of the Suspect Target Management Plan*, 25 October 2017, p43, available at: <https://www.piac.asn.au/wp-content/uploads/2017/10/17.10.25-YJC-STMP-Report.pdf>

The use of the STMP in relation to children is at odds with the aims and principles of the *Young Offenders Act*. The findings of our research indicate that the STMP, when used on children, is a 'parallel system' to the *Young Offenders Act*. The STMP is an inappropriate parallel system because it conflicts with the *Young Offenders Act* principles, not least its aim to divert young people from criminal proceedings. In contrast, the objective of the STMP appears to be to proactively increase police contact to communicate to the young person that they are being monitored and are under surveillance. The STMP is also being used to detect and prosecute minor offences. The negative impacts of the STMP on young people in our research indicates it is not in the best interests of young people.

Based on this analysis, the Report recommended that:¹⁰

NSW Police discontinue applying the STMP to children under 18. Children suspected of being at medium or high risk of offending should be considered for evidence-based prevention programs that address the causes of reoffending (such as through Youth on Track, Police Citizens Youth Clubs NSW (PCYC) or locally based programs developed in accordance with Just Reinvest NSW), rather than placement on an STMP.

PIAC submits that this recommendation is equally valid in relation to the current inquiry, with its focus on improving youth diversion in the broader NSW criminal justice system.

Recommendation 1

NSW Police discontinue applying the STMP to children under 18. Children suspected of being at medium or high risk of offending should be considered for evidence-based prevention programs that address the causes of reoffending (such as through Youth on Track, Police Citizens Youth Clubs NSW (PCYC) or locally based programs developed in accordance with Just Reinvest NSW), rather than placement on an STMP.

3.2 Arrest as a last resort and the policing of bail

The issue of youth diversion generally, and diversion of young Aboriginal and Torres Strait Islander people specifically, also came up in last year's public consultation by the Australian Law Reform Commission regarding Incarceration Rates of Aboriginal and Torres Strait Islander people.

Our submission to that process is included at Attachment B. The following sections from that submission are the most relevant to the current inquiry:

3.2.1 Arrest as a last resort¹¹

¹⁰ Vicki Sentas and Camilla Pandolfini, *Policing Young People in NSW: A study of the Suspect Target Management Plan*, 25 October 2017, p46, available at: <https://www.piac.asn.au/wp-content/uploads/2017/10/17.10.25-YJC-STMP-Report.pdf>

¹¹ PIAC, *Submission to the Australian Law Reform Commission Inquiry re Incarceration Rates of Aboriginal and Torres Strait Islander People*, 31 August 2017, pp5-8, available at: <https://www.piac.asn.au/wp-content/uploads/2017/09/17.08.31-PIAC-Submission-to-ALRC-re-Indigenous-Incarceration-Final.pdf> accessed on 2 February 2018.

In PIAC's submission, the role of police officer discretion in deciding what action to take when confronted with suspected offending in contributing to the rate of incarceration of Aboriginal and Torres Strait Islander people cannot be overstated.

This impact of the exercise of police discretion was well acknowledged by the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). In relation to Aboriginal young people, the RCIADIC noted:

While recognising that many of the issues facing Aboriginal people in general also face Aboriginal youth in particular, I wish to make the point here that police and Aboriginal youth relations are a critical juncture in the entry of Aboriginal youth into the juvenile justice system and often, consequently, into the criminal justice system.¹²

And further:

The police decision to arrest a juvenile marks the point of entry into the juvenile justice system from whence it is often difficult to disentangle oneself. As David Alcock pointed out in his background paper:

The 'necessity' to arrest is the first stage in what can often be a particularly difficult situation. One need only mention the consequent charges of assault police, resist arrest, escape lawful custody that can flow simply from the police decision to arrest.¹³

The RCIADIC made numerous recommendations in relation to ensuring that discretion to arrest and detain Aboriginal and Torres Strait Islander people was exercised as a last resort. For example:

Recommendation 87: That:

- a. All Police Services should adopt and apply the principle of arrest being the sanction of last resort in dealing with offenders;
- b. Police administrators should train and instruct police officers accordingly and should closely check that this principle is carried out in practice;¹⁴

Recommendation 92: That governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort.¹⁵

In relation to Aboriginal and Torres Strait Islander young people, the RCIADIC made the following specific recommendation:

Recommendation 239: That governments should review relevant legislation and police standing orders so as to ensure that police officers do not exercise their powers of arrest in relation to Aboriginal juveniles rather than proceed by way of formal or informal caution or service of an attendance notice or summons unless there are reasonable grounds for believing that such action is necessary. The test whether arrest is necessary should, in general, be more stringent than that imposed in relation to adults. The general rule should be that if the offence alleged to

¹² Royal Commission into Aboriginal Deaths in Custody at 14.4.14.

¹³ Royal Commission into Aboriginal Deaths in Custody at 14.4.16

¹⁴ Royal Commission into Aboriginal Deaths in Custody.

¹⁵ Royal Commission into Aboriginal Deaths in Custody.

have been committed is not grave and if the indications are that the juvenile is unlikely to repeat the offence or commit other offences at that time then arrest should not be effected.

In one particular report, the Commissioner Johnston noted:

In my report of inquiry into the death of Craig Karpany, I emphasised the instance of the role of supervising officers in relation to arrests:

...What is required, I think, is that the atmosphere inside the police force be such that not arresting (other than where that is essential) is regarded as good intelligent policing; that a tough policy of arresting whenever you can is not regarded as good policing.¹⁶

In PIAC's experience, the principle of arrest as a last resort is not routinely adhered to by NSW police officers in deciding what action to take when confronted with suspected offending, particularly in relation to Aboriginal and Torres Strait Islander young people.

Our case work shows police exercising their discretion to arrest (*Law Enforcement (Power and Responsibilities) Act 2002* (NSW) (LEPRA) s 99) and continuing the arrest (LEPRA s 105) when circumstances of a person clearly indicate that a warning, caution or court attendance notice would have been more appropriate and desirable.

The failure by police to routinely consider alternatives to arrest and adhere to the principle of arrest as a last resort, particularly in relation to young people, is, in our view, a significant contributor to incarceration rates of Aboriginal and Torres Strait Islander people.

In PIAC's submission, the principle of arrest and detention as a last resort is not sufficiently embedded in the legal frameworks guiding the practices and decision making of police officers in NSW.

In 2013, section 99 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (LEPRA) was amended to remove the explicit reference to arrest being for the purpose of bringing a person before the Court.

The current section 99 of LEPRA provides police officers with power to arrest a person without a warrant. A police officer must suspect on reasonable grounds that a person is committing or has committed an offence and be satisfied that arrest is reasonably necessary having regard to one or more of the reasons set out in s 99 (1)(b) of LEPRA.

Section 105 of LEPRA provides that a police officer may discontinue an arrest at any time, such as if the person is no longer a suspect, the reason for the arrest no longer exists, or if it is more appropriate to deal with the matter by issuing a warning, caution, penalty notice, court attendance notice or, in the case of a child, dealing with the matter under the *Young Offenders Act 1997* (NSW) (Young Offenders Act).¹⁷

Nowhere in LEPRA does it expressly state that arrest and detention are to be used as a sanction of last resort.

¹⁶ Royal Commission into Aboriginal Deaths in Custody at 21.2.26

¹⁷ LEPRA, s 105 (2).

There is little published guidance for police officers in relation to the principle of arrest as a last resort.

The *NSW Police Force Handbook* appears to reverse the emphasis, stating that if an officer cannot satisfy the reasons for arrest set out in section 99 (1)(b) of LEPRA, the officer must consider alternatives to arrest.¹⁸ This approach to arrest is also reflected in the *NSW Police Force Code of Conduct for CRIME*.¹⁹

In the case of children, the Convention of the Rights of the Child requires that arrest, detention and imprisonment of a child should only be used as a measure of last resort and for the shortest appropriate period.²⁰

Legislation relating to young people embodies these principles to some degree. Section 7 of the *Young Offenders Act* sets out principles guiding persons exercising functions under the Act to include:

- a. The principle that the least restrictive form of sanction is to be applied against a child who is alleged to have committed an offence;²¹ and
- b. The principle that criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with the matter.²²

Further, the *Children (Criminal Proceedings) Act 1987* (NSW) provides that criminal proceedings should not be commenced against a child other than by court attendance notice (CAN).²³ Exceptions to commencement of proceedings by CAN include certain serious offences²⁴, and whether there are reasonable grounds for believing that the child is unlikely to comply with a CAN or is likely to commit further offences.²⁵

The *NSW Police Force Code of Conduct for CRIME* notes that the arrest procedure in section 99 'applies equally to children'.²⁶ The *NSW Police Force Handbook* sets out the procedure for imposing the least restrictive sanctions for young people by reference to the *Young Offenders Act* and the *Children (Criminal Proceedings) Act 1987* (NSW), including that they are entitled to have proceedings commenced by CAN.²⁷

Reducing youth crime and diversion of Aboriginal and Torres Strait Islander young people away from the criminal justice system is identified as a priority in the NSW Police Force Aboriginal Strategic Direction 2012-2017²⁸ and in the NSW Police Force Youth Strategy 2013-2017 (Youth

¹⁸ *NSW Police Force Handbook*, p. 10-11

¹⁹ *NSW Police Force Code of Conduct for CRIME*, 14-15.

²⁰ Convention of the Rights of the Child, Article 37 (b).

²¹ *Young Offenders Act*, s 7 (a).

²² *Young Offenders Act*, s 7 (c).

²³ *Children (Criminal Proceedings) Act 1987* (NSW) s 8(1).

²⁴ *Children (Criminal Proceedings) Act 1987* (NSW) s 8(2)(a).

²⁵ *Children (Criminal Proceedings) Act 1987* (NSW) s 8(2)(b).

²⁶ *NSW Police Force Code of Conduct for CRIME*, 14-15.

²⁷ *NSW Police Force Handbook*, see the 'Young Offenders' section, p. 510.

²⁸ Aboriginal Strategic Direction 2012-2017, pp 28-30.

Strategy).²⁹ The Youth Strategy further identifies directions to address the specific needs of Aboriginal youth.³⁰

Recommendation 2

- *Recommendation 87 of the RCIADIC should be implemented in full.*
- *Powers of arrest (such as those found in s 99 of LEPRA) should expressly provide that arrest and detention must be an option of last resort.*
- *Police policies and procedures (such as those contained in the NSW Police Force Handbook and/or NSW Police Force Code of Conduct for CRIME) should contain clear guidance to police to the effect that arrest is to be used as a measure of last resort and to encourage diversion of suspected offenders away from the criminal justice system including by use of court attendance notices where appropriate.*
- *Police policies and procedures (such as those contained in the NSW Police Force Handbook and/or NSW Police Force Code of Conduct for CRIME) should expressly state that detention should be as a last resort and for the shortest period of time (in line with Convention on the Rights of the Child).*
- *That legislation governing criminal procedures (which in NSW includes the provisions of LEPRA, the Children (Criminal Proceedings) Act, the Young Offenders Act and the Bail Act) should be summarised in internal police policies and procedures (including the NSW Police Force Handbook and/or NSW Police Force Code of Conduct for CRIME) to (i) reinforce the message that arrest and detention should be a last resort and (ii) provide clear guidance as to the procedure police officers must follow, in accordance with law, when confronted with suspected offending by young people.*

3.2.2 Bail³¹

Our comments above in relation to police officers' use of discretion in arrest and detention as a last resort are equally applicable to the discretionary decisions by police in the policing of bail and suspected breaches of bail.

The ALRC Discussion Paper acknowledges that 'police discretion plays a key role in the return to prison of people who breach their bail conditions.'³²

In relation to young people, the Australian Institute of Criminology identifies that:

minimising breaches of bail by young people is an important strategy in minimising levels of young people on custodial remand, since a history of breached bail conditions can influence the outcome of future bail decisions, thereby increasing the likelihood of a young person being remanded in custody.³³

²⁹ NSW Police Force Youth Strategy 2013-2017, Objective 4, p, 15.

³⁰ NSW Police Force Youth Strategy 2013-2017, Objective 5, p, 16.

³¹ PIAC, *Submission to the Australian Law Reform Commission Inquiry re Incarceration Rates of Aboriginal and Torres Strait Islander People*, 31 August 2017, pp8-9, available at: <https://www.piac.asn.au/wp-content/uploads/2017/09/17.08.31-PIAC-Submission-to-ALRC-re-Indigenous-Incarceration-Final.pdf> accessed on 2 February 2018.

³² Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, Discussion Paper 84, July 2017, 2.63.

³³ Australian Institute of Criminology, *Bail and remand for young people in Australia*, at 80.

As noted above, the failure by police to consider alternatives to arrest and detention and adhere to the principle of arrest as a last resort is a significant contributor to incarceration rates of Aboriginal and Torres Strait Islander people. In the context of suspected breaches of bail, our case work shows police:

- a. failing to consider the alternatives to arrest, such as issuing a warning or application notice, as required by *Bail Act 2013* (NSW) s 77(1) (the *Bail Act*); and
- b. failing to consider other matters in deciding what action to take, such as the triviality of the breach and the circumstances of the individual, as required by *Bail Act* s 77(3).

The New South Wales Law Reform Commission Inquiry into Bail recommended that legislation should expressly specify that police officers consider a range of factors when considering what action to take when faced with a suspected breach of bail, including that arrest should be as a last resort.³⁴ In relation to young people, the NSW Law Reform Commission also specifically recommended that police officers should expressly consider a person's age when determining what action to take for suspected breach of bail.³⁵

Recommendation 3

- *Bail laws should expressly provide that arrest for breach of bail is a sanction of last resort (including in section 77 of the NSW Bail Act).*
- *Bail laws should expressly provide that police officers must have regard to a person's age when determining what action should be taken for breach of bail (again including in section 77 of the NSW Bail Act)*
- *In consultation with community, consideration should be given to further trials of the 'breach reduction strategy'³⁶ in communities with large populations of Aboriginal and Torres Strait Islander people.*

3.3 The role of 'targets' for police activity

Both the Suspect Target Management Plan, and increased bail checks, are part of a wider trend towards greater 'proactive policing' practices within NSW Police.

Taken to its broadest extent, proactive policing includes setting 'targets' for a range of different Police activities, including personal searches, the use of move-on powers and bail checks, amongst others.

While there is limited public evidence of the extent of such targets set within NSW Police, PIAC is aware of at least two different sources indicating such target-setting is relatively common. This includes discussion of the impact of proactive policing, and associated targets, on police workload in a 2012 Industrial Relations Commission decision.³⁷

³⁴ New South Wales Law Reform Commission, *Bail*, Report 133 (2012) Recommendation 15.2 (1)(b)(iii).

³⁵ New South Wales Law Reform Commission, *Bail*, Report 133 (2012) Recommendation 15.2 (1)(b)(iv).

³⁶ Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, Discussion Paper 84, July 2017, 2.69.

³⁷ *Crown Employees (Police Officers – 2009) Award (No 2)* [2012] NSWIRComm 104, available at: <https://www.caselaw.nsw.gov.au/decision/54a6385c3004de94513d9f70> accessed on 5 February 2018.

The published minutes of the Lachlan Local Area Command Community Safety Precinct Meetings also indicate the central played by 'proactive' targets.

The 5 June 2017 meeting minutes³⁸ note that: 'The Pro-activity results for January were provided to the meeting – these included Move Ons, Persons Searches, Vehicle Searches, Licensed Inspections, Bail Check, Search Warrants, School Inspections and Rural Inspections' and further noting that 'The high number of [bail] checks being conducted by police is producing good results'.

The 6 March 2017³⁹ and 5 September 2016⁴⁰ minutes both note a similar list of categories of activities being reported while, revealingly, the 10 June 2015 minutes⁴¹ state that:

Pro-activity – Overall results were good with Move-ons being 444 which [was] 121 above the target and Person Search are 1080 which is 35 above the target.

While the role of proactive targets seems to be increasingly accepted, at least within NSW Police, PIAC queries whether the adoption of such targets actually leads to a reduction in crime.

Importantly, there is also a risk that setting targets in the numbers of personal searches, move-ons, and bail checks will lead to an increase in these actions carried out as a matter of routine, and therefore a heightened risk that they are not carried out in accordance with the criteria police must consider to carry out these powers, pursuant to legislation.

As was seen in the discussion about the Suspect Target Management Plan, above, the increased and routine use of police powers can lead to a breakdown of trust between the police and the community, and especially with marginalised community groups such as young people.

Perhaps most importantly for the purposes of the current inquiry, it is likely that setting targets for 'proactive policing' simply increases the interaction between NSW Police and young people generally, and young Aboriginal and Torres Strait Islander people in particular. This then exposes young people to a greater risk of arrest and detention.

Pro-active police targets therefore seems to be contrary to the objectives outlined in the NSW Police Youth Strategy 2013-2017,⁴² including:

Objective 2: Enhance positive relationships between police and youth [and]

Objective 4: Engage in early intervention and prevention initiatives to divert youth from the criminal justice system.

³⁸ Available here:
https://www.police.nsw.gov.au/_data/assets/pdf_file/0005/491864/cspc_20170605_Lachlan_m.pdf

³⁹ Available here:
http://www.police.nsw.gov.au/_data/assets/pdf_file/0009/459099/cspc_20170306_lachlan_m.pdf

⁴⁰ Available here:
http://www.police.nsw.gov.au/_data/assets/pdf_file/0005/424976/CSPC_05092016_lachlan_m.pdf

⁴¹ Available here:
http://www.police.nsw.gov.au/_data/assets/pdf_file/0020/352703/cspc_20150610_lachlan_m.pdf

⁴² NSW Police, *Youth Strategy 2013-2017*, available at:
http://www.police.nsw.gov.au/_data/assets/pdf_file/0007/277054/NSWPF_Youth_Strategy_2013-2017.pdf
accessed on 5 February 2018.

Proactive policing targets also appears to work in the opposite direction to the expressed objective of the NSW Police Aboriginal Strategic Direction 2012-2017 to 'Promote the diversion of Aboriginal youth from the criminal justice system through initiatives such as the Cautioning Aboriginal Young People (CAYP) protocol and the Protected Admissions Scheme (PAS).'⁴³

Given the real possibility that the adoption of specific proactive policing targets is counter-productive to the goal of youth diversion, including the diversion of young Aboriginal and Torres Strait Islander people, from involvement in the criminal justice system, PIAC submits that there should be no such targets specifically applied to young people, and that any activities undertaken in relation to young people should exclude any data from people aged under 18.

Recommendation 4

Proactive policing targets should not be set for activities undertaken by NSW Police in relation to people under 18, and the numbers of activities undertaken by NSW Police in relation to people under 18 should be excluded from overall proactive policing target data.

3.4 Criminal age of responsibility

One of the primary ways in which young people can be diverted from contact with the criminal justice system is by reforming laws to raise the minimum age of criminal responsibility.

Currently, in NSW, the minimum age of criminal responsibility is set at 10 years,⁴⁴ with a rebuttable presumption that a child between the ages of 10 and 14 does not possess the necessary knowledge to have a criminal intention (*doli incapax*).

PIAC submits that setting the minimum age at 10 years is too young, and unnecessarily brings young people into contact with the criminal justice system even when they are unable to understand that they have done something wrong.

The United Nations Committee on the Rights of the Child has recommended that 12 years of age should be the minimum age.

The Royal Commission into the Protection and Detention of Children in the Northern Territory specifically addressed this issue, noting that:⁴⁵

Empirical and scientific research has convincingly shown that:

- Many children and young people who engage in anti-social behaviour and even criminal conduct will mature eventually and become responsible adults
- Those children and young people who are at risk of continuing on a trajectory of criminal behaviour are able to be deflected from such an outcome, and

⁴³ NSW Police, *Aboriginal Strategic Direction 2012-17*, page 28, available at: http://www.police.nsw.gov.au/_data/assets/pdf_file/0003/481215/ASD_2012-2017_Book_Revised_FA_Proof.pdf accessed on 5 February 2018.

⁴⁴ 'It shall be conclusively presumed that no child who is under the age of 10 years can be guilty of an offence': s 5 *Children (Criminal Proceedings) Act 1987* (NSW).

⁴⁵ Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report*, Chapter 27, page 410.

- If a child can be kept out of the formal criminal justice system the prospects of staying out are considerably enhanced.

After examining this issue in depth the Royal Commission recommended that ‘Section 38(1) of the Criminal Code Act (NT) be amended to provide that the age of criminal responsibility be 12 years’ [Recommendation 27.1] while the rebuttable presumption between 12 and 14 would be retained.

In welcoming this decision, a range of relevant groups (including the National Aboriginal & Torres Strait Islander Legal Services, Australian Indigenous Doctors’ Association, Unicef Australia, the Lowitja Institute, Human Rights Law Centre and the RACP) called for the criminal age of responsibility to be raised to at least 14 years.⁴⁶

Wayne Muir, Co-chair of the National Aboriginal and Torres Strait Islander Legal Services, called for a system that is ‘therapeutically and culturally responsive’:

Children are being labelled criminals when all of our efforts should be focussed on keeping children safe and supported within their communities. Removing children as young as ten from their families and forcing them into the criminal justice system takes away their basic rights as children to learn, grow and thrive.

PIAC supports these arguments and submits that the criminal age of responsibility should be raised to at least that recommended by the NT Royal Commission (12), with consideration to setting it at 14.

Recommendation 5

The criminal age of responsibility should be set to at least 12, in line with the recommendation by the Royal Commission into the Protection and Detention of Children in the Northern Territory, with consideration to setting it at 14.

The NT Royal Commission also examined, in detail, the question of whether young offenders who are found liable for criminal offences should be subject to detention:⁴⁷

There are many considerations which, singly and in combination, establish that any apparent punishment and deterrent value of detention is far outweighed by its detrimental impacts, particularly for the minority group of pre-teens and young teenagers. The reality of this cohort’s developmental status; the harsh consequences of separation of younger children from parents/carers, siblings and extended family; the inevitable association with older children with more serious offending histories; that youth detention can interrupt the normal pattern of ‘aging out’ of criminal behaviour; and the lack of evidence in support of positive outcomes as a result of time spent in detention are all results of detention that are counter-productive to younger children engaging sustainably in rehabilitation efforts and reducing recidivism.

⁴⁶ HRLC et al, *Media Release: Doctors, Lawyers, Experts Unite in Call to Raise the Age of Criminal Responsibility*, 21 November 2017, available at: <https://www.hrlc.org.au/news/2017/11/20/experts-unite-in-call-to-raise-age-of-criminal-responsibility> accessed on 2 February 2018.

⁴⁷ Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report*, Chapter 27, page 419.

As a result of these factors, and other arguments, the Commission recommended that, in addition to children under 14 not being remanded in detention:

Section 83 of the *Youth Justice Act* (NT) be amended to add a qualifying condition to section 83(1)(l) that youth under the age of 14 years may not be ordered to serve a term of detention, other than where the youth:

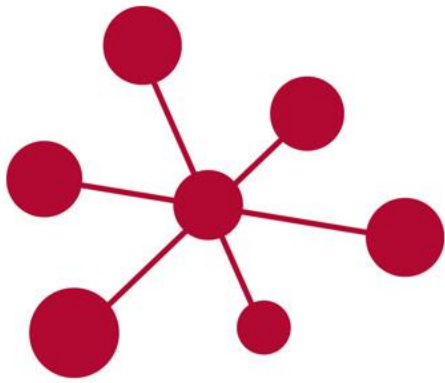
- Has been convicted of a serious and violent crime against the person
- Presents a serious risk to the community, and
- The sentence is approved by the President of the proposed Children's Court.

PIAC agrees with the reasoning outlined by the NT Royal Commission that detention of children younger than 14 is likely to be counter-productive, and that therefore a similar prohibition on remand and detention should be introduced in NSW.

Recommendation 6

Young people under the age of 14 years should not be held on remand, and should not be ordered to serve a term of detention, unless they:

- *Have been convicted of a serious and violent crime against the person*
- *Present a serious risk to the community, and*
- *The sentence is approved by the President of the Children's Court of NSW.*



public interest
ADVOCACY CENTRE

**Submission to Australian Law Reform
Commission re Incarceration Rates of
Aboriginal and Torres Strait Islander Peoples**

31 August 2017

Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in New South Wales. Established in 1982, PIAC tackles systemic issues that have a significant impact on disadvantaged and marginalised people. We ensure basic rights are enjoyed across the community through litigation, public policy development, communication and training.

Our work addresses issues such as:

- homelessness;
- access for people with disability to basic services like public transport, education and online services;
- Indigenous disadvantage;
- discrimination against people with mental health conditions;
- access to energy and water for low-income and vulnerable consumers;
- the exercise of police power;
- the rights of people in detention, including the right to proper medical care; and
- government accountability, including freedom of information.

PIAC is funded from a variety of sources. Core funding is provided by the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the NSW Government for its Energy and Water Consumers Advocacy Program and from private law firm Allens for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, donations and recovery of costs in legal actions.

PIAC's work on Incarceration of Aboriginal and Torres Strait Islander Peoples

PIAC is a strong advocate for justice for Aboriginal and Torres Strait Islander Australians, and has a long history of legal and policy work relating to the ongoing issue of the over-incarceration of Aboriginal and Torres Strait Islander peoples. This includes:

- a 2015 submission to the Finance and Public Administration References Committee's inquiry into *Aboriginal and Torres Strait Islander experience of law enforcement and justice services*¹
- a 2012 paper on *The criminalisation of conduct: Indigenous youth in the criminal justice system*,² and

¹ PIAC, Submission to the Finance and Public Administration References Committee re its *Inquiry into Aboriginal and Torres Strait Islander experience of law enforcement and justice services*, 30 April 2015, available at https://www.piac.asn.au/wp-content/uploads/15.4.30_piacs_submission_to_the_finance_and_public_administration_committee_inquiry_ati_experience_of_law_enforcement_and_justice.pdf

² PIAC, *The criminalisation of conduct: Indigenous youth in the criminal justice system*, 2012, available at https://www.piac.asn.au/wp-content/uploads/12.02.01_the_criminalisation_of_conduct_lb_scan_no_cover.pdf

- a 2009 submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs' *Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system*.³

PIAC has a number of projects that are closely linked to the subject matter being considered by the current inquiry. This includes our Indigenous Justice Project, supported by the law firm Allens, which works in partnership with organisations and communities to identify public interest issues that impact Aboriginal and Torres Strait Islander clients, and conduct advocacy, strategic litigation and policy work to address these wrongs.

It also includes our work on Policing and Detention issues, in which PIAC works to address the over-representation of vulnerable groups, including Aboriginal and Torres Strait Islander people, in the criminal justice system. As part of this project, PIAC aims to ensure that police use their powers, particularly the power of arrest, lawfully and appropriately, and we hold police accountable, including through litigation to challenge inappropriate, unlawful or unjust treatment.

Finally, PIAC operates the long-standing Homeless Persons' Legal Service (HPLS), which addresses the legal needs of homeless people and plays an active role in reducing homelessness. As part of this project we work closely with government and service providers on issues relating to homelessness, including groups that are disproportionately affected by homelessness, such as Aboriginal and Torres Strait Islander people.

³ PIAC, A better future for Australia's Indigenous young people: Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs' Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system, 22 December 2009, available at <https://www.piac.asn.au/wp-content/uploads/09.12.22-PIAC-IndigenousYouthSub.pdf>

Recommendations

From Chapter 2 Bail and the Remand Population

Recommendations

- *Recommendation 87 of the RCIADIC should be implemented in full.*
- *Powers of arrest (such as those found in s 99 of LEPPRA) should expressly provide that arrest and detention must be an option of last resort.*
- *Police policies and procedures (such as those contained in the NSW Police Force Handbook and/or NSW Police Force Code of Conduct for CRIME) should contain clear guidance to police to the effect that arrest is to be used as a measure of last resort and to encourage diversion of suspected offenders away from the criminal justice system including by use of court attendance notices where appropriate.*
- *Police policies and procedures (such as those contained in the NSW Police Force Handbook and/or NSW Police Force Code of Conduct for CRIME) should expressly state that detention should be as a last resort and for the shortest period of time (in line with Convention on the Rights of the Child).*
- *That legislation governing criminal procedures (which in NSW includes the provisions of LEPPRA, the Children (Criminal Proceedings) Act, the Young Offenders Act and the Bail Act) should be summarised in internal police policies and procedures (including the NSW Police Force Handbook and/or NSW Police Force Code of Conduct for CRIME) to (i) reinforce the message that arrest and detention should be a last resort and (ii) provide clear guidance as to the procedure police officers must follow, in accordance with law, when confronted with suspected offending by young people.*
- *Bail laws should expressly provide that arrest for breach of bail is a sanction of last resort (including in section 77 of the NSW Bail Act).*
- *Bail laws should expressly provide that police officers must have regard to a person's age when determining what action should be taken for breach of bail (again including in section 77 of the NSW Bail Act)*
- *In consultation with community, consideration should be given to further trials of the 'breach reduction strategy'⁴ in communities with large populations of Aboriginal and Torres Strait Islander people.*
- *Police policies and training should be clarified to ensure that the policing of bail conditions, and particularly curfew conditions, is lawful (which in NSW means properly authorised by the enforcement condition regime set out in section 30 of the Bail Act) and is not oppressive or counter-productive.*

⁴ Australian Law Reform Commission, Incarceration Rates of Aboriginal and Torres Strait Islander Peoples, Discussion Paper 84, July 2017, 2.69.

1.1 Chapter 2 Bail and the Remand Population

Since 2005, PIAC has maintained a practice in police accountability, predominantly through a referral partnership with the Aboriginal Legal Service NSW/ACT.

PIAC's casework arises from a number of systemic issues:

- unlawful arrests and arrests not being used as a last resort;
- excessive and inappropriate bail monitoring;
- the overuse of stop and search powers, particularly in public places; and
- reliance on the Suspect Target Management Plan (STMP) policy to justify the excessive use of police powers such as personal searches and home visits.

PIAC has advised and represented hundreds of people with false imprisonment, assault, battery, trespass and malicious prosecution claims against police arising from these and other issues.

The vast majority of clients referred to the police accountability project are young Aboriginal people and many live in regional or remote communities. Many clients are particularly vulnerable and face challenging circumstances such as mental illness, drug and alcohol misuse and unstable care arrangements.

To date, PIAC has assisted over 160 Aboriginal and Torres Strait Islander clients in relation to complaints and claims regarding unlawful police conduct. The case work generated from the project has also provided a basis for PIAC's systemic advocacy and law reform on police powers and the broader operation of the criminal justice system in NSW, particularly as it affects Aboriginal and Torres Strait Islander young people.

PIAC's comments are limited to the laws and legal frameworks including legal institutions and law enforcement (police, courts, legal assistance services and prisons) that contribute to the incarceration rate of Aboriginal and Torres Strait Islander peoples and inform decisions to hold or keep Aboriginal and Torres Strait Islander peoples in custody specifically in relation to:

- arrest;⁵
- remand and bail;⁶ and

factors that decision makers take into account when considering arrest and remand and bail such as:

- the degree of discretion available to decision makers;⁷ and
- incarceration as a last resort.⁸

We note that our comments are restricted to laws and legal frameworks within New South Wales given this is where our police accountability clients predominantly reside.

⁵ Australian Law Reform Commission inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples, Terms of Reference, 1.1 iv.

⁶ As above, Terms of Reference, 1.1 v.

⁷ As above, Terms of Reference, 1.2 iii.

⁸ As above, Terms of Reference, 1.2 iv.

Legal frameworks and factors decision makers take into account when considering arrest and incarceration as a last resort

Arrest and incarceration as a last resort

In PIAC's submission, the role of police officer discretion in deciding what action to take when confronted with suspected offending in contributing to the rate of incarceration of Aboriginal and Torres Strait Islander people cannot be overstated.

This impact of the exercise of police discretion was well acknowledged by the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). In relation to Aboriginal young people, the RCIADIC noted:

While recognising that many of the issues facing Aboriginal people in general also face Aboriginal youth in particular, I wish to make the point here that police and Aboriginal youth relations are a critical juncture in the entry of Aboriginal youth into the juvenile justice system and often, consequently, into the criminal justice system.⁹

And further:

The police decision to arrest a juvenile marks the point of entry into the juvenile justice system from whence it is often difficult to disentangle oneself. As David Alcock pointed out in his background paper:

The 'necessity' to arrest is the first stage in what can often be a particularly difficult situation. One need only mention the consequent charges of assault police, resist arrest, escape lawful custody that can flow simply from the police decision to arrest.¹⁰

The RCIADIC made numerous recommendations in relation to ensuring that discretion to arrest and detain Aboriginal and Torres Strait Islander people was exercised as a last resort. For example:

Recommendation 87: That:

- a. All Police Services should adopt and apply the principle of arrest being the sanction of last resort in dealing with offenders;
- b. Police administrators should train and instruct police officers accordingly and should closely check that this principle is carried out in practice;¹¹

Recommendation 92: That governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort.¹²

In relation to Aboriginal and Torres Strait Islander young people, the RCIADIC made the following specific recommendation:

⁹ Royal Commission into Aboriginal Deaths in Custody at 14.4.14.

¹⁰ Royal Commission into Aboriginal Deaths in Custody at 14.4.16

¹¹ Royal Commission into Aboriginal Deaths in Custody.

¹² Royal Commission into Aboriginal Deaths in Custody.

Recommendation 239: That governments should review relevant legislation and police standing orders so as to ensure that police officers do not exercise their powers of arrest in relation to Aboriginal juveniles rather than proceed by way of formal or informal caution or service of an attendance notice or summons unless there are reasonable grounds for believing that such action is necessary. The test whether arrest is necessary should, in general, be more stringent than that imposed in relation to adults. The general rule should be that if the offence alleged to have been committed is not grave and if the indications are that the juvenile is unlikely to repeat the offence or commit other offences at that time then arrest should not be effected.

In one particular report, the Commissioner Johnston noted:

In my report of inquiry into the death of Craig Karpany, I emphasised the instance of the role of supervising officers in relation to arrests:

...What is required, I think, is that the atmosphere inside the police force be such that not arresting (other than where that is essential) is regarded as good intelligent policing; that a tough policy of arresting whenever you can is not regarded as good policing.¹³

PIAC's experience

In PIAC's experience, the principle of arrest as a last resort is not routinely adhered to by NSW police officers in deciding what action to take when confronted with suspected offending, particularly in relation to Aboriginal and Torres Strait Islander young people.

Our case work shows police exercising their discretion to arrest (*Law Enforcement (Power and Responsibilities) Act 2002* (NSW) (LEPRA) s 99) and continuing the arrest (LEPRA s 105) when circumstances of a person clearly indicate that a warning, caution or court attendance notice would have been more appropriate and desirable.

The failure by police to routinely consider alternatives to arrest and adhere to the principle of arrest as a last resort, particularly in relation to young people, is, in our view, a significant contributor to incarceration rates of Aboriginal and Torres Strait Islander people.

Relevant legal frameworks in NSW

In PIAC's submission, the principle of arrest and detention as a last resort is not sufficiently embedded in the legal frameworks guiding the practices and decision making of police officers in NSW.

In 2013, section 99 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (LEPRA) was amended to remove the explicit reference to arrest being for the purpose of bringing a person before the Court.

The current section 99 of LEPRA provides police officers with power to arrest a person without a warrant. A police officer must suspect on reasonable grounds that a person is committing or has committed an offence and be satisfied that arrest is reasonably necessary having regard to one or more of the reasons set out in s 99 (1)(b) of LEPRA.

¹³ Royal Commission into Aboriginal Deaths in Custody at 21.2.26

Section 105 of LEPR provides that a police officer may discontinue an arrest at any time, such as if the person is no longer a suspect, the reason for the arrest no longer exists, or if it is more appropriate to deal with the matter by issuing a warning, caution, penalty notice, court attendance notice or, in the case of a child, dealing with the matter under the *Young Offenders Act 1997* (NSW) (Young Offenders Act).¹⁴

Nowhere in LEPR does it expressly state that arrest and detention are to be used as a sanction of last resort.

There is little published guidance for police officers in relation to the principle of arrest as a last resort.

The *NSW Police Force Handbook* appears to reverse the emphasis, stating that unless an officer cannot satisfy the reasons for arrest set out in section 99 (1)(b) of LEPR, the officer must consider alternatives to arrest.¹⁵ This approach to arrest is also reflected in the *NSW Police Force Code of Conduct for CRIME*.¹⁶

In the case of children, the Convention of the Rights of the Child requires that arrest, detention and imprisonment of a child should only be used a measure of last resort and for the shortest appropriate period.¹⁷

Legislation relating to young people embodies these principles to some degree. Section 7 of the *Young Offenders Act* sets out principles guiding persons exercising functions under the Act to include:

- a. The principle that the least restrictive form of sanction is to be applied against a child who is alleged to have committed an offence;¹⁸ and
- b. The principle that criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with the matter.¹⁹

Further, the *Children (Criminal Proceedings) Act 1987* (NSW) provides that criminal proceedings should not be commenced against a child other than by court attendance notice (CAN).²⁰ Exceptions to commencement of proceedings by CAN include certain serious offences²¹, and whether there are reasonable grounds for believing that the child is unlikely to comply with a CAN or is likely to commit further offences.²²

The *NSW Police Force Code of Conduct for CRIME* notes that the arrest procedure in section 99 'applies equally to children'.²³ The *NSW Police Force Handbook* sets out the procedure for imposing the least restrictive sanctions for young people by reference to the *Young Offenders Act*

¹⁴ LEPR, s 105 (2).

¹⁵ *NSW Police Force Handbook*, p. 10-11

¹⁶ *NSW Police Force Code of Conduct for CRIME*, 14-15.

¹⁷ Convention of the Rights of the Child, Article 37 (b).

¹⁸ *Young Offenders Act*, s 7 (a).

¹⁹ *Young Offenders Act*, s 7 (c).

²⁰ *Children (Criminal Proceedings) Act 1987* (NSW) s 8(1).

²¹ *Children (Criminal Proceedings) Act 1987* (NSW) s 8(2)(a).

²² *Children (Criminal Proceedings) Act 1987* (NSW) s 8(2)(b).

²³ *NSW Police Force Code of Conduct for CRIME*, 14-15.

and the *Children (Criminal Proceedings) Act 1987* (NSW), including that they entitled to have proceedings commenced by CAN.²⁴

Reducing youth crime and diversion of Aboriginal and Torres Strait Islander young people away from the criminal justice system is identified as a priority in the NSW Police Force Aboriginal Strategic Direction 2012-2017²⁵ and in the NSW Police Force Youth Strategy 2013-2017 (Youth Strategy).²⁶ The Youth Strategy further identifies directions to address the specific needs of Aboriginal youth.²⁷

Recommendations

- *Recommendation 87 of the RCIADIC should be implemented in full.*
- *Powers of arrest (such as those found in s 99 of LEPPRA) should expressly provide that arrest and detention must be an option of last resort.*
- *Police policies and procedures (such as those contained in the NSW Police Force Handbook and/or NSW Police Force Code of Conduct for CRIME) should contain clear guidance to police to the effect that arrest is to be used as a measure of last resort and to encourage diversion of suspected offenders away from the criminal justice system including by use of court attendance notices where appropriate.*
- *Police policies and procedures (such as those contained in the NSW Police Force Handbook and/or NSW Police Force Code of Conduct for CRIME) should expressly state that detention should be as a last resort and for the shortest period of time (in line with Convention on the Rights of the Child).*
- *That legislation governing criminal procedures (which in NSW includes the provisions of LEPPRA, the Children (Criminal Proceedings) Act, the Young Offenders Act and the Bail Act) should be summarised in internal police policies and procedures (including the NSW Police Force Handbook and/or NSW Police Force Code of Conduct for CRIME) to (i) reinforce the message that arrest and detention should be a last resort and (ii) provide clear guidance as to the procedure police officers must follow, in accordance with law, when confronted with suspected offending by young people.*

Legal frameworks and factors decision makers take into account when policing bail and incarceration as a last resort

Our comments above in relation to police officers' use of discretion in arrest and detention as a last resort are equally applicable to the discretionary decisions by police in the policing of bail and suspected breaches of bail.

The ALRC Discussion Paper acknowledges that 'police discretion plays a key role in the return to prison of people who breach their bail conditions.'²⁸

In relation to young people, the Australian Institute of Criminology identifies that:

²⁴ NSW Police Force Handbook, see the 'Young Offenders' section, p. 510.

²⁵ Aboriginal Strategic Direction 2012-2017, pp 28-30.

²⁶ NSW Police Force Youth Strategy 2013-2017, Objective 4, p, 15.

²⁷ NSW Police Force Youth Strategy 2013-2017, Objective 5, p, 16.

²⁸ Australian Law Reform Commission, Incarceration Rates of Aboriginal and Torres Strait Islander Peoples, Discussion Paper 84, July 2017, 2.63.

minimising breaches of bail by young people is an important strategy in minimising levels of young people on custodial remand, since a history of breached bail conditions can influence the outcome of future bail decisions, thereby increasing the likelihood of a young person being remanded in custody.²⁹

As noted above, the failure by police to consider alternatives to arrest and detention and adhere to the principle of arrest as a last resort is a significant contributor to incarceration rates of Aboriginal and Torres Strait Islander people. In the context of suspected breaches of bail, our case work shows police:

- a. failing to consider the alternatives to arrest, such as issuing a warning or application notice, as required by *Bail Act 2013* (NSW) s 77(1) (the *Bail Act*); and
- b. failing to consider other matters in deciding what action to take, such as the triviality of the breach and the circumstances of the individual, as required by *Bail Act* s 77(3).

The New South Wales Law Reform Commission Inquiry into Bail recommended that legislation should expressly specify that police officers consider a range of factors when considering what action to take when faced with a suspected breach of bail, including that arrest should be as a last resort.³⁰ In relation to young people, the NSW Law Reform Commission also specifically recommended that police officers should expressly consider a person's age when determining what action to take for suspected breach of bail.³¹

Recommendations

- *Bail laws should expressly provide that arrest for breach of bail is a sanction of last resort (including in section 77 of the NSW Bail Act).*
- *Bail laws should expressly provide that police officers must have regard to a person's age when determining what action should be taken for breach of bail (again including in section 77 of the NSW Bail Act)*
- *In consultation with community, consideration should be given to further trials of the 'breach reduction strategy'³² in communities with large populations of Aboriginal and Torres Strait Islander people.*

Policing bail conditions and proactive policing (STMP)

The experience of PIAC's clients reflects that as set out at 2.67 of the Discussion Paper. That is, our young Aboriginal clients, their family, communities and legal representatives regularly report a sense of them being targeted and harassed by police.

One particular issue that has arisen in the context of unwarranted police harassment is a complaint of repeated and excessive bail compliance checks, particularly in respect of bail conditions concerning curfews.

²⁹ Australian Institute of Criminology, *Bail and remand for young people in Australia*, at 80.

³⁰ New South Wales Law Reform Commission, *Bail*, Report 133 (2012) Recommendation 15.2 (1)(b)(iii).

³¹ New South Wales Law Reform Commission, *Bail*, Report 133 (2012) Recommendation 15.2 (1)(b)(iv).

³² Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, Discussion Paper 84, July 2017, 2.69.

The concern is that increased contact with the police, by way of frequent attendance at residential premises to check on curfew compliance, leads to increased and unnecessary contact with the criminal justice system and increased risk of incarceration and further criminalisation of young people.

A related concern is the inconsistent approach taken by Local Area Commands in NSW relation to policing of bail conditions concerning curfews.

In our view, the bail enforcement regime set out in section 30 of the *Bail Act* is intended to cover directions by police officers to persons subject to a curfew – meaning that, in order to direct that person to present to the front door for the purpose of checking compliance, an enforcement order needs to be in place (otherwise it is unlawful).

Many of our clients report police officers attending private residences in the early hours of the morning, often more than once a night, and several times a week, in order to check compliance with a curfew without an enforcement condition in place. In our experience, many police officers believe that they do not require an enforcement condition in order to direct a person to the door in order to check compliance with a curfew.

The bail enforcement regime provides important safeguards around the policing of bail conditions. For example, an enforcement condition can only be imposed by the Court in circumstances where it is reasonable and necessary having regard to the history of the person granted bail (including their criminal history), the likelihood of the person committing further offences, and the extent to which compliance with the enforcement conditions may unreasonably affect other persons.³³ Further, it is for the Court to decide the kind of directions that can be given to the person at liberty on bail and the circumstances in which the direction may be given, to ensure that compliance with the direction is not unduly onerous.³⁴

Recommendation

Police policies and training should be clarified to ensure that the policing of bail conditions, and particularly curfew conditions, is lawful (which in NSW means properly authorised by the enforcement condition regime set out in section 30 of the Bail Act) and is not oppressive or counter-productive.

The STMP

Another practice engaged in by law enforcement which undoubtedly leads to increased rates of incarceration of Aboriginal and Torres Strait Islander people in New South Wales, and particularly youth, is the use of 'proactive' policing strategies such as repeated stops and searches and move on directions, area profiling and use of the Suspect Target Management Plan (STMP).

The ALRC Discussion Paper notes the use of the STMP by the NSW Police Force.³⁵ The ALRC Discussion Paper raises the STMP in the context of policing of bail conditions. In our experience

³³ Bail Act, s 30 (5).

³⁴ Bail Act, s 30 (4).

³⁵ Australian Law Reform Commission, Incarceration Rates of Aboriginal and Torres Strait Islander Peoples, Discussion Paper 84, July 2017, 2.67.

this is not necessarily an accurate representation of when the STMP is utilised by police. To the contrary, many of our clients subject to the STMP, are not on bail and have rather been identified as being at risk of reoffending.

Concerns about the use of the STMP as a policing strategy against Aboriginal and Torres Strait Islander youth include:

- a. Many young people placed on the STMP have a history of only minor offending;
- b. Some police officers mistakenly believe they have the right to stop and search people placed on the STMP;
- c. STMP targets experience disruption to their home life, families and relationships when they are visited regularly at home by police;
- d. Targeting young Aboriginal people under the STMP is an inappropriate strategy to reduce the risk of re-offending of young Aboriginal people.

Responses to specific proposals in Discussion Paper

Proposal 2–1 The Bail Act 1977 (Vic) has a standalone provision that requires bail authorities to consider any ‘issues that arise due to the person’s Aboriginality’, including cultural background, ties to family and place, and cultural obligations. This consideration is in addition to any other requirements of the Bail Act.

Other state and territory bail legislation should adopt similar provisions.

As with all other bail considerations, the requirement to consider issues that arise due to the person’s Aboriginality would not supersede considerations of community safety.

PIAC supports this proposal and suggests that bail legislation also includes a reference to a person’s age. We recommend that guidelines accompany legislative change so that police officers have guidance as to how a person’s Aboriginality should guide their discretion when making bail decisions.

Proposal 2–2 State and territory governments should work with peak Aboriginal and Torres Strait Islander organisations to identify service gaps and develop the infrastructure required to provide culturally appropriate bail support and diversion options where needed.

PIAC supports this proposal in principle.

1.2 Chapter 3 Sentencing and Aboriginality and Chapter 4 Sentencing Options

PIAC acts for a relatively small number of Aboriginal and Torres Strait Islander clients in the context of sentencing through the Homeless Persons’ Legal Service. This is primarily with respect to homeless people, including people living on the street, people in sheltered, crisis and long-term assisted accommodation, ‘couch surfers’ and people in danger of losing their housing.

We support the view that courts need to take into account a person's Indigenous background in setting an appropriate sentence. We also see value in improving access to, and funding for, detailed reports about Indigenous offenders to assist courts in their sentencing deliberations.

However, in terms of answers to specific questions posed in Chapters 3 and 4 (regarding Sentencing and Aboriginality, and Sentencing Options, respectively) we defer to the expertise of and submissions from Aboriginal Legal Service NSW and other Indigenous-specific legal services.

1.3 Chapter 5 Prison Programs, Parole and Unsupervised Release

As noted in the introduction, one of the areas of PIAC's work that is particularly relevant to this inquiry is the Homeless Person's Legal Service, including its policy work looking at the contributing factors to homelessness, including the homelessness of Aboriginal and Torres Strait Islander (ATSI) people in NSW.

The following discussion examines the interaction between imprisonment and homelessness, before responding to the specific questions posed in this Chapter.

The close relationship between recent prison experience, housing crisis, homelessness, and socio-economic disadvantage has been confirmed in several Australian studies over the last fifteen years. Casework data from the HPLS Solicitor Advocate also suggests that there is a strong causal relationship between previous experiences of imprisonment, homelessness and further re-offending. From July 2010 – June 2016, the HPLS Solicitor Advocate has provided court representation to 511 people. Of these 5.8% were ATSI.

- Of the 511 people represented, 37.6% had previously been in prison;
- Of those who were ATSI, 40% had previously been in prison (compared to 37.4% of non-ATSI defendants).

While these figures indicate that a slightly higher proportion of ATSI clients had previous experience of prison, the cyclical relationship between homelessness and exiting prison affects ATSI people in a disproportionate way for the following reasons:

1. ATSI people have four times the rate of homelessness for non-ATSI people, making up 9% of the total homeless population (despite making up only 2.5% of the whole Australian population).³⁶
2. ATSI people make up 28% of the Australian prison population.

The particular factors that result in the close causal relationship between exiting prison and homelessness are highly relevant to ATSI people given the over representation of ATSI people in both the prison population and homelessness population.

³⁶ Australian Institute of Health and Welfare (AIHW) (2017), Homelessness – A profile for Aboriginal and Torres Strait Islander people,

Aboriginal people and homelessness

According to the NSW specialist homelessness services data from the Australian Institute of Health and Welfare (AIHW) of the total number of clients of NSW specialist homelessness services:

- 25% identified as ATSI descent;
- Of those clients experiencing repeat homelessness, 27% identified as ATSI descent.³⁷

People of ATSI descent are more likely to experience homelessness due to systemic and generational disadvantage. Aboriginal and Torres Strait Islander people are disproportionately represented in the risk factors for homelessness:

- Unemployment rates among Aboriginal people are around three times that of non-Aboriginal Australians;
- Aboriginal young people are more likely to be unemployed than their non-Aboriginal peers;
- The average income of Aboriginal people is 60% of the national average;
- Aboriginal women are more likely to experience domestic and family violence;
- Aboriginal young people represent around a third of children and young people in out-of-home care;
- Aboriginal people are more likely to be imprisoned;
- Aboriginal young people are detained at a notably higher rate than non-Aboriginal young people.³⁸

Given the cyclical relationship between homelessness and prison the over-representation of ATSI people in the homeless population and in the population most affected by the risk factors of homelessness, ATSI people are at a higher risk of imprisonment due to factors of housing instability and homelessness than non-ATSI people.

Homelessness and exiting prison

Given the over-representation of Aboriginal and Torres Strait Islander people in the prison population, ATSI people are at high risk of encountering the difficulties and barriers in securing and maintaining accommodation that are common amongst people exiting prison. They are also at high risk of facing the barriers faced by ex-prisoners in reintegrating into the wider community, including the risks of reoffending and returning to prison.

People exiting prison face considerable barriers and problems in securing and maintaining accommodation. A number of factors present as barriers for ex-prisoners integrating into the wider community, including:

- discrimination and stigmatisation as offenders;
- the effects of institutionalisation;
- accumulated debt prior to and during the term of imprisonment;
- loss of tenancy or relationship breakdown while in custody;

³⁷ AIHW (2015), *2014-15 NSW specialist homelessness services data*, AIHW.

³⁸ NSW Government (2016), *Foundations for Change – Homelessness in NSW*, Discussion Paper, NSW Government September 2016, 24.

- recidivism and repeated episodes of imprisonment;
- social isolation after exiting prison, and returning to pro-criminal associations;
- lack of access to and eligibility for public housing.³⁹

In 2003, research undertaken on behalf of the Australian Housing and Urban Research Institute⁴⁰ sought to provide an understanding of the housing needs and circumstances of persons being released from prisons in NSW and Victoria. This project involved interviews with a sample of people about to be released from prisons in NSW and Victoria, with subsequent interviews at three months and then six months post-release. In total, there were 194 participants (130 male, 64 female) from New South Wales and 145 participants (122 male, 23 female) from Victoria, all of who were interviewed pre-release and followed up post-release. At the nine-month post-release interview, 238 participants remained in the study (145 in NSW, 93 in Victoria).

The study concluded:

- Ex-prisoners were more likely to return to prison if they
 - had been in prison before and had been on remand or serving a short sentence;
 - were homeless or transient post-release;
 - did not have accommodation support or they felt the support was unhelpful;
 - suffered from alcohol and other drug problems; or
 - were in debt.
- The strongest predictors of ex-prisoners being re-incarcerated were found to be high levels of transience in the immediate post-release period (moving more than twice within a three-month period) and/or experiencing worsening problems with heroin use.
- Indigenous participants were particularly vulnerable to homelessness and lack of integration.

In 2012, PIAC undertook a consultation project exploring the experiences and difficulties faced by people who have recently exited the prison system into situations of housing crisis or homelessness. This project involved consultation interviews with 26 people who exited prison in the previous two years into situations of housing crisis or homelessness.⁴¹

Twenty-three participants indicated that they had been in prison on more than one occasion. Fourteen participants indicated that their most recent term of imprisonment was for less than 12 months. Eight participants said that their most recent term of imprisonment was for more than two years.

Over a third of participants indicated that on the night they were released from prison they slept rough, or had some other form of primary homelessness. Other responses also indicated a form of homelessness such as couch surfing, short-term emergency or temporary accommodation, supported accommodation, transitional accommodation, boarding house accommodation, or

³⁹ Willis, Matthew and Makkai, Toni (2008), 'Ex-Prisoners and Homelessness: Some Key Issues', PARITY, Volume 21, Issue 9, October 2008, 6-7.

⁴⁰ Dr Eileen Baldry, Dr Desmond McDonnell, Peter Maplestone and Manu Peeters, 'Ex-prisoners and accommodation: what bearing do different forms of housing have on social reintegration?', AHURI Final Report No. 46, August 2003

⁴¹ Schetzer, Louis (2013), *Beyond the Prison Gates – The experiences of people recently released from prison into homelessness and housing crisis*, Public Interest Advocacy Centre, July 2013.

staying with friends and family. All participants were either currently homeless, or had experienced homelessness in the previous three months.

Participants identified some particular difficulties securing stable accommodation following release from prison. Commonly recurring themes include:

- The temporary nature of most accommodation options;
- The lack of social housing in NSW, the lengthy waiting list for public housing, and frustration negotiating processes and procedures to access social housing or community housing;
- Lack of availability of crisis accommodation options for people leaving prison, with many services having no beds available – “everything’s full”;
- Discrimination on the basis of being an ex-prisoner, particularly from boarding houses;
- Inability to afford private rental accommodation or boarding house accommodation;
- Not having identification to enable access to social security payments to pay for accommodation;
- Being paroled to crisis or temporary accommodation services which did not have available accommodation, thus placing them in breach of parole;
- Lack of support services or accommodation services.

Participants identified various factors that presented difficulties for them in reintegrating into the community, and particularly presenting obstacles in securing stable accommodation. Commonly recurring themes in this regard include:

- The risk/temptation to reoffend, due to difficulties in fitting into society, lack of accommodation options, lack of independent living skills;
- Disconnection from society, institutionalisation and lack of living skills;
- Feeling isolated from friends and community support networks; being exposed to bad influences making reoffending an easy option;
- Having previous legal and criminal problems resurface unexpectedly;
- For women, feeling unsafe and vulnerable to abuse or harassment;
- Difficulty finding employment;
- Difficulties associated with alcohol or substance addiction;
- Mental illness.

The most important issue identified was the importance of pre-release exit planning for prisoners, and the need for consistent, integrated case-management for people released from prison which commences pre-release and continues post-release. In addition, the need for access to appropriate welfare support prior to release, as well as comprehensive information regarding available accommodation and support services post-release, were common suggestions for improvement.

A strong theme that emerged was the need for more community-managed, supported transitional accommodation for ex-prisoners, more crisis accommodation, more affordable accommodation, and more social housing. Participants identified a range of difficulties with accessing

accommodation, including problems of availability, affordability and discrimination on the basis of criminal and prison history.

Several consultation participants spoke about the importance of stable, safe housing in terms of reintegrating back into the community and moving away from a life of reoffending and returning to prison. Their comments suggest that for people recently released from prison, housing and stable accommodation are often seen as important symbols of hope and promise for a new life, where one can move away from a life of disadvantage, re-offending and repeated periods of incarceration.

Proposal 5-1 Prison programs should be developed and made available to accused people held on remand and people serving short sentences.

PIAC supports this proposal. In particular, people on remand and/or serving short sentences need access to programs that help to organise post-release housing.

Question 5-1 What are the best practice elements of programs that could respond to Aboriginal and Torres Strait Islander peoples held on remand or serving short sentences of imprisonment?

PIAC is not in a position to respond broadly about the best practice elements of remand and/or short prison sentence programs, although we reiterate our comment from Proposal 5-1, that any such programs must include elements which assist with access to post-release housing.

Proposal 5-2 There are few prison programs for female prisoners and these may not address the needs of Aboriginal and Torres Strait Islander female prisoners. State and territory corrective services should develop culturally appropriate programs that are readily available to Aboriginal and Torres Strait Islander female prisoners.

PIAC supports this proposal.

Question 5-2 What are the best practice elements of programs for Aboriginal and Torres Strait Islander female prisoners to address offending behaviour?

PIAC is not in a position to respond broadly about the best practice elements of these programs, although we again express the view that such programs must include plans for post-release housing/housing support, including to prevent recidivism, and above all to aid rehabilitation into the community.

Proposal 5-3 A statutory regime of automatic court ordered parole should apply in all states and territories.

PIAC supports-in-principle this proposal.

Question 5-3 A statutory regime of automatic court ordered parole applies in NSW, Queensland and SA. What are the best practice elements of such schemes?

PIAC is not in a position to respond broadly about the best elements of such schemes. However, we express some concern about one of the major limitations of the scheme as it operates in NSW.

As the Discussion Paper notes on page 101:

Court ordered parole may be revoked before release due to unsuitable post-release accommodation, or because plans in relation to post-release accommodation have not, or

cannot, be made. This is a major hurdle for many Aboriginal and Torres Strait Islander prisoners.

Aboriginal and Torres Strait Islander people should not be imprisoned at disproportionate rates, and for greater periods of time, simply because of a lack of housing options post-release. This means that additional funding must be provided by State and Territory Governments for programs in these areas.

Proposal 5-4 Parole revocation schemes should be amended to abolish requirements for the time spent on parole to be served again in prison if parole is revoked.

PIAC strongly supports this proposal.

1.4 Chapter 6 Fines and Driver Licences

Proposal 6-1 Fine default should not result in the imprisonment of the defaulter. State and territory governments should abolish provisions in fine enforcement statutes that provide for imprisonment in lieu of unpaid fine.

PIAC supports this proposal. We note that this proposal is based on a long history of reports and reviews that have recommended the removal of imprisonment being automatically imposed for the default of payment of a fine (including the Royal Commission into Aboriginal Deaths in Custody, and the 2012 NSW Law Reform Commission Review of Penalty Notices).

We are also aware of the particular issues faced by homeless people in this area, including Aboriginal and Torres Strait Islander homeless people, who may accumulate large, and unpayable, amounts in fines, and consequently are exposed to potential imprisonment.

However, we agree with the caution expressed by the Discussion Paper where it notes that ‘to remove the option for prison is to remove a “short and sharp” option for people without the means to discharge their fine debt’,⁴² and that therefore alternative options must be available to ensure that fines do not simply accrue further for vulnerable individuals.

Question 6-1 Should lower level penalties be introduced, such as suspended infringement notices or written cautions?

PIAC supports-in-principle the introduction of lower level penalties, including suspended infringement notices and/or written cautions. However, we are concerned about the potential for these lower level penalties to be used by police in a wider range of circumstances, rather than as an alternative to a ‘higher level’ penalty (such as an infringement notice).

This could bring even more people into unnecessary, formal contact with the criminal justice system, thus defeating the overall purpose of such a reform. Therefore, we suggest that if these penalties are introduced and/or expanded, they should be reviewed to ensure that they are not simply being used in addition to other penalties, instead of in substitution for them.

⁴² ALRC Discussion Paper, para 6.30, page 113.

Question 6-2 Should monetary penalties received under infringement notices be reduced or limited to a certain amount? If so, how?

PIAC supports-in-principle the imposition of a limit on the monetary penalties received under infringement notices, and believes further consideration should be given to the recommendation of the NSW Law Reform Commission that infringement notices should not exceed 25% of the maximum court fine for that offence.

Question 6-3 Should the number of infringement notices able to be issued in one transaction be limited?

PIAC strongly supports this proposal, which would lead to punishment being more appropriate to a particular set of circumstances.

Question 6-4 Should offensive language remain a criminal offence? If so, in what circumstances?

PIAC believes that offensive language should not remain a criminal offence. This position is at least partly based on the disproportionate use of CINs for this offence with respect to Aboriginal and Torres Strait Islander people. As noted in the Discussion Paper:⁴³

[T]he NSW Ombudsman found that 11% of CINs for offensive language in 2008 were issued to Aboriginal and Torres Strait Islander people [and that] [m]ore recently, it was reported that the proportion had risen to 17%.

Question 6-5 Should offensive language provisions be removed from criminal infringement notice schemes, meaning that they must instead be dealt with by the court?

If offensive language is not abolished as a criminal offence (see question 6-4, above), PIAC does not support it being subject to criminal infringement notices or being dealt with by the courts in the first instance. Instead, we believe that, given the extremely low level of 'offending' that forms this offence, it should be dealt with via the use of cautions as the primary punishment.

Question 6-6 Should state and territory governments provide alternative penalties to court ordered fines? This could include, for example, suspended fines, day fines, and/or work and development orders?

and

Proposal 6-2 Work and Development Orders were introduced in NSW in 2009. They enable a person who cannot pay fines due to hardship, illness, addiction, or homelessness to discharge their debt through:

- **Work;**
- **Program attendance;**
- **Medical treatment;**

⁴³ Ibid, para 6.47, page 119.

- **Counselling; or**
- **Education, including driving lessons.**

State and territory governments should introduce work and development orders based on this model.

PIAC believes that there is an obligation on, and urgent need for, state and territory governments to provide alternative penalties to court ordered fines. Specifically, we agree with Proposal 6-2 that Work and Development Orders should be introduced in all jurisdictions, although there are also improvements that could be made to ensure they are culturally appropriate for Aboriginal and Torres Strait Islander people.

This is based on our experience of the operation of the NSW scheme to date.

The Work and Development Order (WDO) scheme has proven to be an effective mechanism for helping individuals manage and reduce their debts. For many clients of PIAC's Homeless Persons' Legal Service, access to the WDO scheme has allowed them to resolve their fines debt while engaging in meaningful activities that promote positive outcomes, such as volunteer work or health treatment.

However, the WDO scheme is not suited to all individuals as paying off a substantial debt would require a regular commitment over an extended period of time. Consideration should be given to the additional barriers to participation that are faced by Aboriginal and Torres Strait Islander people who may have family and cultural commitments that require them to spend their time across two or more locations.

Two key strategies could be adopted that would help make the scheme more accessible on a wider scale:

- a) To ensure that culturally appropriate options are available to participants, Aboriginal and Torres Strait Islander community controlled organisations should be supported to become participants in the WDO scheme in New South Wales, and in other jurisdictions where the scheme is adopted. Additional resources may be required to allow those organisations to provide appropriate support to participants, and to meet the ongoing administrative and reporting requirements of their own participation in the scheme.
- b) The process for temporarily suspending and then reinstating a WDO should be streamlined. This would make it easier for individuals with complex life circumstances to take part, and to continue with their participation following a break (which may be due to a health condition, family commitment, unstable housing, etc).

Question 6-7 Should fine default statutory regimes be amended to remove the enforcement measure of driver licence suspensions?

PIAC supports-in-principle the removal of driver licence suspensions as an enforcement measure for fine default.

Question 6-8 What mechanisms could be introduced to enable people reliant upon driver licences to be protected from suspension caused by fine default? For example, should:

- a) Recovery agencies be given discretion to skip the licence suspension step where the person in default is vulnerable, as in NSW; or
- b) Courts be given discretion regarding the disqualification, and disqualification period, of driver licences where a person was initially suspended due to fine default?

and

Question 6-9 Is there a need for regional driver permit schemes? If so, how should they operate?

and

Question 6-10 How could the delivery of driver licence programs to regional and remote Aboriginal and Torres Strait Islander communities be improved?

PIAC is not in a position to comment on Questions 6-8, 6-9 or 6-10.

1.5 Chapter 9 Female Offenders

Question 9-1 What reforms to laws and legal frameworks are required to strengthen diversionary options and improve criminal justice processes for Aboriginal and Torres Strait Islander female defendants and offenders?

As indicated in response to Chapters 3 and 4, PIAC only has a relatively small involvement in the context of sentencing for Aboriginal and Torres Strait Islander people (primarily in the context of people accessing the Homeless Person's Legal Service). In that case, we defer to the expertise of organisations such as the Aboriginal Legal Service NSW in their views about these issues. However, we do express the broad view that there should be greater input from Aboriginal and Torres Strait Islander women's services in crafting non-custodial alternatives, in preparing reports to courts, and in providing other expertise.

1.6 Chapter 10 Aboriginal Justice Agreements

Question 10-1 Should the Commonwealth Government develop justice targets as part of the review of the Closing the Gap policy? If so, what should those targets encompass?

Yes, PIAC believes that Closing the Gap should include justice targets. As we submitted to the Finance and Public Administration References Committee's *Inquiry into Aboriginal and Torres Strait Islander experience of law enforcement and justice services*:⁴⁴

⁴⁴ PIAC, Submission to the Finance and Public Administration References Committee re its *Inquiry into Aboriginal and Torres Strait Islander experience of law enforcement and justice services*, 30 April 2015, pp 18-19, available at https://www.piac.asn.au/wp-content/uploads/15.4.30_piacs_submission_to_the_finance_and_public_administration_committee_inquiry_ati_experience_of_law_enforcement_and_justice.pdf

PIAC believes that 'justice targets' must be included in the list of targets, which were established by the Council of Australian Governments in 2008. The current targets in the Closing the Gap framework relate to life expectancy, child mortality, education and employment. The exclusion of justice targets ignores an important indicator of improvement in the current target areas. It also ignores the fact that the disadvantage experienced by Aboriginal and Torres Strait Islander people is multi-layered. For example, for an Aboriginal or Torres Strait Islander young person, reaching a higher level of education, which will impact on whether that young person undertakes university studies and employment, both of which are factors which have been shown to reduce the likelihood he will end up in the criminal justice system. Excluding justice targets is to leave out a significant chunk of policy that must relate to and interact with other policies seeking to address Aboriginal disadvantage.

There have been calls for justice targets to address the problem of Aboriginal involvement in the criminal justice system from a number of government, parliamentary and independent bodies. The National Congress of Australia's First Peoples, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs and the Aboriginal and Torres Strait Islander Social Justice Commissioner have all called for justice targets to be implemented.⁴⁵ PIAC believes justice targets set a measurable goal that ensures accountability of successive governments and has the potential to positively impact the legislative and policy development processes.

PIAC accordingly urges the Committee to recommend that the current position taken by the Australian Government, rejecting the need for justice targets,⁴⁶ be reassessed in light of overwhelming support for their inclusion in the Closing the Gap strategy.

In terms of what the targets should encompass, PIAC suggests they should recognise the overall issue of over-incarceration of Indigenous Australians, as well as the specific issue of the disproportionate detention of Aboriginal and Torres Strait Islander young people in juvenile justice (particularly given the consequences of interactions with juvenile justice on other targets, such as health and education).

Given the scale of the gaps that exist in both areas (overall, and juvenile justice), PIAC also suggests that a medium term and a long-term target should be introduced for each. The goal for closing the gap in overall incarceration is extended because of prison sentences currently being served. For example:

- Halve the gap in juvenile justice detention rates by 2022
- Halve the gap in overall incarceration rates by 2022
- Close the gap in juvenile justice detention rates by 2027, and
- Close the gap in overall incarceration rates by 2032.

⁴⁵ National Congress of Australia's First Peoples, *National Justice Policy*, February 2013, at page 11; House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing*, above, note **Error! Bookmark not defined.**, at page 22; Aboriginal and Torres Strait Islander Social Justice Commissioner Annual Report, above note **Error! Bookmark not defined.**, at page 117;

⁴⁶ See Gordon, M "Indigenous Affairs Minister Nigel Scullion Rejects justice targets for Indigenous Affairs", 19 November 2014, *Sydney Morning Herald Online*, available at <http://www.smh.com.au/federal-politics/political-news/indigenous-affairs-minister-nigel-scullion-rejects-justice-targets-for-indigenous-people-20141119-11pykc.html>.

1.7 Chapter 11 Access to Justice Issues

Question 11-2 In what ways can availability and access to Aboriginal and Torres Strait Islander legal services be increased?

There are a variety of ways in which the availability of and access to legal services can be increased, but one of the most fundamental is sufficient, and sustainable, funding.

While PIAC, and the community legal sector generally, welcomed the recent decision by the Commonwealth Government to not proceed with planned funding cuts to the sector, this decision does not mean that community legal services are adequately funded.

As noted in the ALRC Discussion Paper on page 203, the Productivity Commission's Access to Justice report estimated that 'the additional cost of *adequately* supporting this sector [the legal services sector and those organisations servicing the Aboriginal and Torres Strait Islander community] would amount to around \$200 million per year' (emphasis in original).

Therefore, one key way to increase of availability and access to Aboriginal and Torres Strait Islander legal services would be for the Commonwealth and State and Territory governments to increase funding to the legal assistance sector, particularly Aboriginal and Torres Strait Islander Legal Services.

1.8 Chapter 12 Police Accountability

Question 12-3 Is there value in policy publicly reporting annually on their engagement strategies, programs and outcomes with Aboriginal and Torres Strait Islander communities that are designed to prevent offending behaviours?

Yes. As noted in the discussion under Chapter 2 (above), NSW Police have proposed strategies contained in documents such as the NSW Police Force Aboriginal Strategic Direction 2012-17 and the NSW Police Force Youth Strategy 2013-17 relating to the diversion of Aboriginal and Torres Strait Islander people (and young people in particular) from the criminal justice system. In our view, it is essential that reporting on strategies such as these is made public so that progress can be monitored and stakeholders can engage in providing feedback and evaluation. In particular, reporting on these strategies should refer to any other relevant policies or practices that impact upon these strategies.

Question 12-4 Should police that are undertaking programs aimed at reducing offending behaviours in Aboriginal and Torres Strait Islander communities be required to: document programs; undertake systems and outcomes evaluations; and put succession planning in place to ensure continuity of the programs?

Yes. PIAC supports the documentation of these policies, as well as their regular monitoring and evaluation. This is both best practice, and will help to ensure that any programs that are undertaken are effective, and continue to remain relevant to the circumstances. Where they are

not (effective or relevant) these resources should be redirected to other programs and initiatives aimed at reducing offending behaviours.

However, PIAC believes that the most important of these three suggestions is to ensure that succession planning is in place to provide continuity of these programs. The temporary, inconsistent or sporadic implementation of programs, no matter how well designed, can lead to significant problems in their outcomes as well as contributing to (understandable) distrust from Aboriginal and Torres Strait Islander communities with respect to future programs.

1.9 Chapter 13 Justice Reinvestment

Question 13-1 What laws, or legal frameworks, if any, are required to facilitate justice reinvestment initiatives for Aboriginal and Torres Strait Islander peoples?

PIAC is not in a position to comment on specific new laws or legal frameworks that are necessary to facilitate justice reinvestment projects at this stage.

However, we have consistently advocated for the funding and implementation of justice reinvestment projects, including in our 2015 submission to the Senate Finance and Public Administration References Committee Inquiry into *Access to Legal Services*:⁴⁷

PIAC 'strongly supports programs and policies both within and external to the criminal justice system that rely on justice reinvestment theory. However, it should also be borne in mind that it is imperative that community service organisations, which generally are the core service providers of such programs, are adequately resourced.

We also reiterate our support for the Maranguka Project in Bourke, being run by Just Reinvest NSW in partnership with local Aboriginal communities.

⁴⁷ PIAC, Submission to the Finance and Public Administration References Committee re its *Inquiry into Aboriginal and Torres Strait Islander experience of law enforcement and justice services*, 30 April 2015, p18, available at https://www.piac.asn.au/wp-content/uploads/15.4.30_piacs_submission_to_the_finance_and_public_administration_committee_inquiry_ati_experience_of_law_enforcement_and_justice.pdf



Policing Young People in NSW

A study of the Suspect Targeting Management Plan

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This report was written on the land of the Gadigal People of the Eora Nation. The Youth Justice Coalition acknowledge the traditional owners and custodians of the lands on which we work as the first people of this country.

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Executive Summary

The New South Wales Police Force (**NSW Police**) Suspect Targeting Management Plan (**STMP**) seeks to prevent future offending by targeting repeat offenders and people police believe are likely to commit future crime. The STMP is both a police intelligence tool that uses risk assessment to identify suspects and a policing program that guides police interaction with individuals who are subject to the program.

This report focuses on how the STMP is applied to children and young people. The report documents how the STMP is used in relation to young people, young people's experiences with the STMP and the impact that the STMP is having on young people's interactions with police and criminal justice. This report also documents the impact of the STMP on policing practice and police application of the law.

Findings in this report are based on i) available quantitative data on program participants, ii) de-identified case studies drawn from interviews with lawyers, iii) publicly available guidance given to police on STMP operational procedures, and iv) analysis of case law and legislation.

The research has been limited by the lack of publicly available information on the STMP and the absence, to date, of scrutiny and oversight of the program. By adopting a mixed methods approach, the report is able to make robust preliminary findings and identify areas for further investigation.

The preliminary findings based on this research are:

- **Disproportionate use against young people and Aboriginal people:** Data shows the STMP disproportionately targets young people, particularly Aboriginal and Torres Strait Islander people, and has been used against children as young as ten.
- **Patterns of 'oppressive policing' that may be damaging relationships between police and young people:** Young people targeted on the STMP experience a pattern of repeated contact with police in confrontational circumstances such as through stop and search, move on directions and regular home visits. The STMP risks damaging relationships between young people and the police. Young people, their families or legal representatives are rarely aware of criteria used to add or remove people from the STMP. As the case studies show, young people experience the STMP as a pattern of oppressive, unjust policing.
- **Increasing young people's costly contact with the criminal justice system and no observable impact on crime prevention:** The STMP has the effect of increasing vulnerable young people's contact with the criminal justice system. Application of the STMP can be seen to undermine key objectives of the NSW youth criminal justice system, including diversion, rehabilitation and therapeutic justice. The research has identified several instances where Aboriginal young people on Youth Koori Court therapeutic programs have had their rehabilitation compromised by remaining on the STMP. There is no publicly available evidence that the STMP reduces youth crime.
- **Encouraging poor police practice:** In some instances, the exercise of police search powers in relation to a young person on the STMP have been found unlawful by the courts. The STMP may be inadvertently diminishing police understanding of the lawful use of powers (set out in the Law Enforcement Police Powers and Responsibilities Act 2002 (NSW) (**LEPRA**)) and thereby exposing police to reduced efficacy and civil action.
- **No transparency and an absence of oversight, scrutiny or evaluation:** The operation of the STMP is not transparent or accountable. Criteria for placement on the STMP are not publicly available, individuals cannot access their STMP plan and it is unclear what criteria are used by police to remove a person from the STMP.


The report proposes a number of recommendations based on these findings and the research represented in this report. These recommendations provide clear and specific guidance to the NSW Police Force and the Law Enforcement Conduct Commission.

Recommendations

Based on the research and findings presented here, the report recommends that:

1. **NSW Police** discontinue applying the STMP to children under 18. Children suspected of being at medium or high risk of reoffending should be considered for evidence-based prevention programs that address the causes of reoffending (such as through Youth on Track, Police Citizens Youth Clubs NSW (**PCYC**) or locally based programs developed in accordance with Just Reinvest NSW), rather than placement on an STMP.
2. **NSW Police** make the STMP policy and operational arrangements publicly available to enable transparency and accountability.
3. **NSW Police** amend the STMP policy so that any person considered to have a 'low risk' of committing offences not be subject to the STMP.
4. **NSW Police** amend the STMP Policy to mandate formal notification by police to any individual placed on a STMP, including reasons for placement on the STMP and the date of next review. Subsequent notifications to individuals on an STMP should outline the outcome of the review and reasons for the STMP being maintained or discontinued.
5. **NSW Police** make data on the STMP publicly available through the NSW Bureau of Crime Statistics and Research (BOCSAR). Available data should include demographic information (age, Aboriginal or Torres Strait Islander status, ethnicity, Local Area Command LAC), as well as data on the length of time enrolled in the STMP and the category of risk determined.
6. **NSW Police** commission BOCSAR to evaluate whether the STMP is reducing youth crime.
7. **NSW Police** provide all police officers with formal training on the STMP which:
 - i. Clarifies its status as an intelligence tool;
 - ii. Provides guidance on the criteria for inclusion and exclusion from the program and the alternative programs available;
 - iii. Sets out its operational requirements, and limits; and
 - iv. Provides guidance on the relationship of the STMP to the law. For example, training should clarify that a persons' inclusion on an STMP cannot provide a basis for grounding a reasonable suspicion (either on its own or together with a number of other factors) under LEPRA.
8. **The Law Enforcement Conduct Commission (LECC)** conduct a comprehensive review of the STMP.¹ The terms of reference of the recommended LECC review should include consideration of whether the STMP:
 - i. is effective and appropriate in dealing with the risk of offending in young people under 25 and children;
 - ii. is effective and appropriate in dealing with the risk of offending in adults;
 - iii. is effective and appropriate in relation to other vulnerable people (as defined in clause 28 of the Law Enforcement (Powers and Responsibilities) Regulation 2016), including those with impaired intellectual or physical functioning, Aboriginal and Torres Strait Islander peoples and persons from non-English speaking backgrounds;

1 *Law Enforcement Conduct Commission Act 2016* (NSW), s 11.

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- iv. is consistent with NSW policy and practice for juvenile justice including principles of diversion from the criminal justice system as well as NSW law, including the Young Offenders Act 1997 (NSW), and the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW); and
 - v. is consistent with NSW Police policies and practices for policing children and young people, including the NSW Police Force Youth Strategy, as well as the Aboriginal Strategic Direction and Aboriginal Action Plans, the NSW Domestic Violence Strategy, the NSW Police Disability Inclusion Action Plan and all other policies and procedures regarding vulnerable persons.

In the course of the review, the LECC should consult with other professional disciplines such as mental health practitioners, Family and Community Services Managers, the Department of Justice, and community workers about best practice in diversion, crime prevention and the needs of young people.

Finally, this report is the first publicly available study about the STMP. The unjustified secrecy around the STMP has prevented appropriate, transparent, program evaluation and more thorough examination of the impact the STMP is having on young people, crime prevention and police practice. This report's conclusion that the operation of the STMP is likely to be having damaging effects on young people is compelling grounds for further investigation and external scrutiny.

1 Introduction

1.1 WHO HAS PREPARED THIS REPORT?

This report has been prepared by the Youth Justice Coalition (YJC) STMP working group.

The YJC is a network of youth workers, children's lawyers, academics and policy workers who promote the rights of children and young people in NSW and across Australia, including their rights under the UN Convention on the Rights of the Child and other international human rights instruments. The YJC seeks to promote appropriate and effective legislation, policies and practices in juvenile justice, child welfare and other areas of law affecting children and young people, and to ensure that children's and young people's views, interests and rights are taken into account in law reform and policy debates.

The working group includes Dr Vicki Sentas of the Redfern Legal Centre Police Powers Clinic and Faculty of Law, University of New South Wales, and staff from the Public Interest Advocacy Centre, Marrickville Legal Centre, Shopfront Youth Legal Centre and Legal Aid NSW. Dr Sentas was the principal investigator for the working group.

1.2 A FOCUS ON YOUNG PEOPLE: THE RESEARCH QUESTION AND METHOD

This report focuses on how the STMP is applied to children and young people. The report documents how the STMP is used in relation to young people, young people's experiences with the STMP and the impact that the STMP is having on young people's interactions with police and criminal justice. This report also documents the impact of the STMP on policing practice and police application of the law.

In this report, a 'young person' is a person under the age of 25.² Consistent with the UN Convention on the Rights of the Child, we use the term 'child' to refer to individuals under the age of 18.

The report draws together the limited public information about the STMP and supplements it with qualitative and quantitative data collected by the working group.

Findings in this report are based on i) available quantitative data on program participants, ii) de-identified case studies drawn from interviews with lawyers, iii) publicly available guidance given to police on STMP operational procedures, and iv) analysis of case law and legislation.

The research has been limited by the lack of publicly available information on the STMP and the absence, to date, of scrutiny and oversight of the program. By adopting a mixed-methods approach, the report is able to make robust preliminary findings and identify areas for further investigation.

1.3 LIMITS TO THIS RESEARCH: DOMESTIC VIOLENCE

In October 2015, the then Deputy Premier and Minister for Police Troy Grant, and the Minister for the Prevention of Domestic Violence and Sexual Assault Pru Goward, announced that the STMP would be used to target 'recidivist domestic violence offenders'.

The YJC working group members do not have any clients, or expertise, in the use of the STMP with respect to perpetrators of domestic violence. Use of the STMP in relation to domestic violence was not, as a result, investigated in this research and this report does not address its use in this area of the law.

² United Nations Educational, Scientific and Cultural Organisation, What do we mean by "youth"? (2017) [www.unesco.org < http://www.unesco.org/new/en/social-and-human-sciences/themes/youth/youth-definition/>](http://www.unesco.org/new/en/social-and-human-sciences/themes/youth/youth-definition/); Advocate for Children and Young People Act 2014 (NSW), s 3.

1.4 WHAT IS THE STMP: A TOOL, A PROCESS, A PLAN

The purpose of the STMP is to identify, assess and target people 'suspected of being recidivist offenders, or responsible for emerging crime problems within each LAC'³. The STMP 'seeks to effectively target command resources to prevent and address identified current crime problems'.⁴

The STMP is concerned with deterring the future criminal activity of both recidivist offenders as well as those who have not been found guilty of offences, but suspected by police to be at risk of committing crimes. The STMP is a multifaceted instrument made up of interrelated components. The STMP is comprised of:

- an administrative policy
- an intelligence and risk assessment tool, and
- a targeted policing program.

The STMP was developed in 1999 by the then Intelligence and Analysis Section of the Information and Intelligence Centre of NSW Police, 'with the help of the Local Area Commands' and implemented in February 2000.⁵ A later iteration of the STMP, the 'Suspect Targeting Management Plan II (STMP II)' was introduced on 2 May 2005.⁶ Accordingly, the procedures described below drawn from earlier sources may be different to current practice. The STMP utilises a quantitative risk assessment tool, designed to identify individuals' risk of re-offending.⁷ Individuals identified for inclusion on the STMP are subject to a 'targeted program' by NSW Police officers,⁸ which includes police attending the individual's house on a regular basis, and using police powers of stop and search, and move on directions, whenever police encounter the individual.

Although the STMP is used state-wide, 'Local Area Command Crime Management Units play an integral role in the management of targeted offenders'.⁹ Each LAC appears to utilise the STMP differently, including whom they target, and how they target individuals.

Any NSW police officer can nominate an individual as a target.¹⁰ An intelligence package is then assembled and presented to the targeting team, usually the Crime Management Unit.¹¹ The targeting team assesses the nomination by completing a subject rating form and creating an information report listing the target details and why they were nominated.¹²

In the first version of the STMP, individuals were allocated a category of either high-risk offender, medium-risk offender, sleeper (not currently active) or 'rejected'.¹³ If categorised as a high-risk offender, an individual was allocated a case manager.¹⁴ It is not clear what functions and responsibilities case management entails. Nor is it clear if case management extends to additional categories of the STMP in its current iteration.

3 NSW Ombudsman, 'The consorting law: Report on the operation of Part 3A, Division 7 of the *Crimes Act 1900* (Report, NSW Ombudsman, April 2016) 118 ('*Ombudsman Consorting Law Report*').

4 Ibid.

5 Anonymous, 'Suspect Targeting Management Plan' (2000) 12 (3) *Police Service Weekly* 4 ('*Suspect Targeting Plan 2000*'); NSW Ombudsman, 'Improving the Management of Complaints: Police complaints and repeat offenders' (Special Report to Parliament under s 31 of the *Ombudsman Act 1974*, September 2002).

6 *Ombudsman Consorting Law Report*, above n 3, quoting NSW Police Force, *Suspect Targeting Management Plan II*, undated, 26; *DEZ v Commissioner of Police, NSW Police Force* [2015] NSWCATAD 15.

7 Vicki Sentas and Scarlett Wilcock, Proactive policing, preemptive targets: The Suspect Target Management Plan' (2017), (forthcoming).

8 *Suspect Targeting Plan 2000*, above n 5; *Ombudsman Consorting Law Report*, above n 3, 118.

9 Dr Col Gellatly, Premier's Department, Submission No 55 to the Standing Committee on Social Issues, *Inquiry into Issues Relating to Redfern and Waterloo*, December 2004, 267-269, cited in Standing Committee on Social Issues, New South Wales Legislative Council, *Inquiry into Issues Relating to Redfern and Waterloo: Final Report*, 2004), 41.

10 *Suspect Targeting Plan 2000*, above n 5, 4.

11 Ibid.

12 Ibid 4,5

13 Ibid.

14 Ibid.

1 Introduction

From the data we have obtained from NSW Police through the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**), it appears that the following categories of the STMP are currently in use:

- extreme risk;
- high risk;
- medium risk; and
- low risk.

According to the NSW Ombudsman, the policy seeks to provide an accountable process to structure police identification and targeting:

The plan aims to standardise police practices through the 'introduction of structured, accountable and ethical identification and targeting mechanisms' It requires police to nominate individuals for consideration, with the risk of their involvement in ongoing offending assessed by an intelligence officer based on suspected and historical criminal activity and other available information. Assessment, nomination and development of strategies are shared by more than one officer, and targeting strategies must be approved by senior staff.¹⁵

Yet, the STMP presents great risks to accountable policing, procedural fairness and legality. We understand that the Ombudsman's reference to the STMP as a standardised plan may refer to the use of particular algorithms, or risk assessment tools, to calculate a person's risk of offending or re-offending. However, the STMP policy and risk assessment tools are not publicly available. The details of the risk assessment that is carried out, including the risk factors taken into account and how those factors are weighted and measured, are not available to the person placed on the STMP. It is impossible to assess the claim that the STMP is accountable because it deploys risk assessment tools, if these tools and the assumptions underlying them are not made available for scrutiny.

Consequently, the type of risk posed by an individual placed in any particular STMP category is unclear. It is not clear whether these categories relate to a risk of re-offending for any offence, regardless of the nature or seriousness of the potential offence, or whether the categories relate to the seriousness of offending or level of risk to the community.

If the latter criteria are used, a person enrolled in a high risk category would have a history of committing serious or violent crimes. If the former criteria are used, a young person with very high levels of contact with the police and a high volume of offending for minor matters such as shoplifting, graffiti or public order offences, might be classified as 'high risk'.

Conversely, it is unclear why a young person categorised as 'low risk' by NSW Police should be placed on the STMP. If a young person's risk of offending (for either minor offences, or more serious offences) is low, the compatibility of the STMP with established principles of diverting young people from the criminal justice system are at issue. We explore these problems at sections 5 and 6.

In the absence of transparent criteria, individuals are often left wondering whether factors such as their race or their family history have influenced the NSW Police decision to nominate them as a target on the STMP.

This absence of clear explanation for placement on an STMP then cascades into absence of transparent, clear or lawful justification in the targeting or management of an individual. The STMP is not created by statute and provides no further powers to police than those contained in LEPR.

In section 5.3, this report documents instances where the courts have found the STMP to be an unlawful

¹⁵ Ombudsman Consorting Law Report, above n 3, 118.



justification for the exercise of police power, and young people's experiences of not knowing why they are targeted in circumstances where they have not committed an offence.

Recommendations:

NSW Police make the STMP policy and operational arrangements publicly available to enable transparency and accountability.

NSW Police amend the STMP policy so that any person considered to have a 'low risk' of committing offences not be subject to the STMP.

NSW Police amend the STMP Policy to mandate formal notification by police to any individual placed on a STMP, including reasons for placement on the STMP and the date of next review. Subsequent notifications to individuals on an STMP should outline the outcome of the review and reasons for the STMP being maintained or discontinued.

2 The use of the STMP in Local Area Commands

The following section presents data on the use of the STMP obtained from NSW Police in relation to ten LACs in NSW across metropolitan Sydney and regional areas. These LACs are: Redfern, Parramatta, Orana, Canobolas, Bankstown, Blacktown, Blue Mountains, Mount Druitt, Barwon and St Marys. A range of urban and regional LACs were chosen. LACs were also selected where lawyers available for this research have clients. This was so that the available data could be compared to the qualitative experience of young people and their legal representatives. The suburbs and towns that each of these LACs cover is set out in Appendix One.

2.1 HOW DATA ON USE OF THE STMP WAS OBTAINED

Data on the use of the STMP is not routinely available and is not reported in the usual publicly available sources for police practice and the criminal justice system in NSW. To date, the NSW Police Force has been unwilling to freely disclose data on the use of the STMP.

The YJC sought to obtain data on the use of the STMP directly from NSW Police through the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**). Access for much of the information was refused.

Initially, the YJC made an application for the current STMP policy. In February 2015, however, NCAT affirmed the decision of NSW Police in another matter to refuse access to the STMP policy and to an individual's STMP documents; *DEZ v Commissioner of Police, NSW Police Force* [2015] NSWCATAD 15.¹⁶

The YJC also intended to make GIPA applications for statistics on the STMP relevant to the whole of NSW, covering each LAC in NSW. However, after making three separate GIPA applications for data relating to the STMP in particular LACs, it became clear that the NSW Police would not release the information without substantial amendments to the scope of requests, would not provide the data in a manner that would allow appropriate analysis, and that the cost of processing fees was prohibitively high. It took, in many cases, months to receive a small portion of the data requested.

However, the GIPA applications to NSW Police did provide some data which reveals some limited demographic information about who is subject to the STMP.

Applications under the GIPA Act were made for statistics relevant to use of the STMP in the LACS of Redfern, Parramatta, Orana, Canobolas, and Bankstown for the financial year 1 July 2013 to 30 June 2014 (**2014FY**) and for the financial year 1 July 2014 to 30 June 2015 (**2015FY**). We made a further application for statistics relevant to the use of the STMP in the LACs of Blacktown, Blue Mountains, Mount Druitt, Barwon and St Marys for the 2015FY only.

For the 2014FY, we requested demographic information relevant to those individuals who were still on a current STMP as at 30 June 2014. NSW Police did not provide demographic information, such as age, racial background, and length of time subject to an STMP, for each individual. They instead provided these statistics based on the aggregated demographic data. This refusal was made on the basis that the information may reveal an individual's identity.

¹⁶ In *DEZ v Commissioner of Police, NSW Police Force* [2015] NSWCATAD 15, the STMP policy documents were refused on the basis of cl7 (2) of Schedule 1 of the GIPA Act, which provides 'It is to be conclusively presumed that there is an overriding public interest against disclosure of information contained in any of the following documents: ... (c) a document created by the State Crime Command of the NSW Police Force in the exercise of its functions concerning the collection, analysis or dissemination of intelligence.'

The documents relevant to the individual were refused by NCAT on the basis that disclosure of his documents would prejudice the effective exercise of NSW Police functions (clause 1(f) of the Table) or would prejudice the prevention, detection or investigation of a contravention or possible contravention of the law or prejudice the enforcement of the law (clause 2(b) of the Table), and it was determined that these factors outweighed the public interest considerations in favour of releasing the documents to the individual.

Additionally, NSW Police did not provide information as to how long each individual was subject to an STMP beyond the period requested. This means that the data here regarding the length of time in total that each individual was subject to an STMP is incomplete.

Public access to data on how the STMP is used would aid the NSW Police Force in evaluating the program and supporting greater transparency and accountability.

Recommendation:

That NSW Police make data on the STMP publicly available through BOCSAR. Available data should include demographic information, (age, racial background, LAC) as well as data on the length of time enrolled in the STMP, and risk categories.

2.2 SUMMARY OF USE OF THE STMP IN 2014-15 FY FOR THE LACS OF REDFERN, PARRAMATTA, ORANA, CANOBOLAS, BANKSTOWN, BLACKTOWN, BLUE MOUNTAINS, MOUNT DRUITT, BARWON AND ST MARYS.

This section summarises the data obtained from NSW Police through the GIPA Act. The statistics are set out in more detail in Appendix Two to this report. Population statistics set out below and at Appendix Two are drawn from the 2011 census.

Table 1:
2015 Financial year – Ten LACs

Local Area Command	Redfern	Parramatta	Orana	Canobolas	Bankstown	Blacktown	Blue Mnts	Mt Druitt	Barwon	St Marys	TOTAL
Total STMP targets 2014-15 FY	45	10	28	22	11	21	11	15	40	10	213
STMP targets current as at June 2015	11	5	6	7	3	4	6	8	5	5	60
Category											
Extreme	28	8	14 [~]	12	7	8	4	14	19	6	120
High	16	2	14 [~]	6	4	9	5	1	15	4	76
Medium	1	-	2	3	-	4	2	-	6	-	18
Low	-	-	-	1	-	-	-	-	-	-	1
SEX											
Sex - male	44	9	22	20	11	20	11	15	37	10	199
Sex - female	1	1	6	2	0	1	0	0	3	0	14
DURATION											
Duration - Mean (months)	2.9	4.4	3.8	5 [^]	4.7	3.4	4.4	5.1	4.3	5.6	

2 The use of the STMP in Local Area Commands

Local Area Command	Redfern	Parramatta	Orana	Canobolas	Bankstown	Blacktown	Blue Mnts	Mt Druitt	Barwon	St Marys	TOTAL
AGE											
Number of young people under 25	13	5	15	7	5	17	7	14	13	8	104
Age when placed on STMP - Mean (years)	31.4	27.5	26.4	31.7	26.6	20.2	25.4	18.1	30 [*]	21.4	
Age when placed on STMP - Median (years)	31.5	22	25	31	29	18	18	17	30.5 [*]	19	
Age unknown	1	-	-	-	-	-	-	-	-	-	1
RACIAL BACKGROUND											
Caucasian, or 'Caucasian appearance', 'Australian' or 'Australian Born'	15	3	5	11	1	14	8	6	16	6	85
Aboriginal	27	-	23	8	-	4	2	6	22	2	94
Middle Eastern, Afghan	-	1	-	1	6	1~	-	2	-	1	12
'Black African', 'African' or Sudanese	1	-	-	-	-	2	-	1	-	-	4
Pacific Islander, Fiji Indian	1	2	-	-	-	-	-	-	-	-	3
Maori	-	-	-	-	-	-	1	-	-	-	1
Indian	-	-	-	-	1	-	-	-	-	1	2
East Asian	-	-	-	-	1	-	-	-	-	-	1
Eastern European	1	-	-	-	-	-	-	-	1	-	2
Sri Lankan	-	2	-	-	-	-	-	-	-	-	2
Mediterranean	-	-	-	12 [*]	-	-	-	-	-	-	2
Unknown	-	2	-	-	2	-	-	-	1	-	5

Table notes

[^] Based on data provided for only 20 of the 22 people on STMP

[~] total of four 17 year olds, 2 listed as 'turned 18 during the year'

^{*} Based on age data provided for 39 out of a total of 40 people on STMP.

⁻ Orana data on STMP risk categories relates to 30 people, but only 28 people were identified as being on STMP during the year. Suggests error in police data.

^{*} listed as 12, which totals 32, 10 more than the total number of STMP targets for the year in this LAC. Suggests police error in figures.

[~] listed as 'Mediterranean/Middle Eastern Appearance'

In summary:

- Across the 10 LACs: 213 people were subject to an STMP, 60 of whom were still subject to an STMP as at 30 June 2015;
- Over half (120 or 56.3%) of the people subject to an STMP were categorised as extreme high risk;
- Nearly all of the individuals subject to an STMP were male (199 or 93.4%).
- One hundred and four (48.82%) of STMP targets were young people. The youngest STMP target was just 11 years old;
- Ninety-four (44.1%) were identified as Aboriginal;
- Eighty-five (39.9%) were listed as Australian born or Caucasian;
- Twelve (5.6%) were identified as Middle Eastern or Afghan;
- A further 17 (12.5%) people were identified as of Maori, Islander, African, Mediterranean, Indian, Sri Lankan, Eastern European or East Asian background;
- The racial background of five people was unknown;
- Mount Druitt was responsible for the lowest average age of STMP targets, with all but one of the targets being under 25 in the 2015FY;
- Barwon had 40 STMP targets, the second highest number out of all ten LACS examined. 67% or 27 of those individuals were Aboriginal;
- In Redfern, 45 people were subject to a STMP, six more than in the 2014FY and the highest of all LACs in 2015. 60% of the individuals targeted in Redfern were Aboriginal, even though only 2% of the Redfern population is Aboriginal;
- In Orana, 28 people were the subject of an STMP in the 2015FY. In Orana, young people made up 53.6% (15) of the targets in the 2015FY. The youngest person on an STMP in Orana was just 11 years old, representing the youngest person on an STMP during the year out of all LACS examined.

Table 2:

2014 Financial Year – Redfern, Parramatta, Orana, Canobolas and Bankstown LACs

Local Area Command	Redfern	Parramatta	Orana	Canobolas	Bankstown	TOTAL
Total STMP targets 2013-14 FY	39	13	40	14	15	121
Current STMP targets as at June 2014	11	6	10	8	6	41
Number of young people under 25	2	5	5	1	5	18
Age - Mean (years)*	31.9	22.5	23.6	27.6	25.2	26.7
Age - Median (years)*	31	18	23	20.5	22.5	
Racial background - Caucasian, 'Australian' or 'Australian Born'*	5	2	0	2	3	12
Racial background - Middle Eastern*	0	1	0	0	3	4
Racial background - Pacific Islander*	0	1	0	0	0	1
Racial background - Aboriginal*	6	0	10	6	0	22
Racial background – unknown*	0	2	0	0	0	2

*of STMP targets current as at 30 June 2014

2 The use of the STMP in Local Area Commands

In the LACs of Redfern, Parramatta, Orana, Canobolas and Bankstown in the 2014FY:

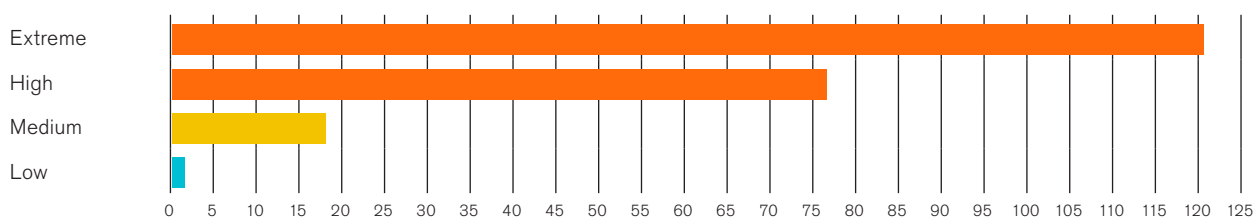
- One hundred and twenty-one people were subject to an STMP, 41 of whom were still subject to an STMP as at 30 June 2014;
- Fifteen of the STMP targets were young people under 25, with the youngest being 10 years old;
- Of the 41 people on an STMP as at 30 June 2015, 22 were identified as Aboriginal, 12 were listed as Australian born or Caucasian, and four were identified as Middle Eastern or Afghan. One person was identified as of Pacific Islander background. The racial background of two people was unknown;
- Redfern LAC subjected 39 different people to an STMP; the second highest out of the five LACS examined in that year, and targets included one 13-year-old;
- Of the five LACs examined, Orana had the most STMP targets totalling 40, one more than Redfern. Orana had the largest number of young people out of all five LACS, and also the youngest person subjected to an STMP aged just 10 years. Of the 10 STMP targets current as at 30 June 2014 in Orana, 100% were Aboriginal.

2.3 USE OF RISK CATEGORIES IN THE STMP

Of the 215* people subject to an STMP across the 10 LACs in 2015, 120 (55.8%) were categorised as extreme risk, 76 (35.3%) high risk and 18 people (8.4%) were medium risk. One person (0.5%) was categorised as low risk. Mount Druitt had the highest proportion of people categorised as extreme risk with all but one person (14 of 15) on the STMP categorised as extreme risk.

There is no clear guidance on how an individual's risk category is determined, why someone categorised as low risk is subject to an STMP, whether and how the targeting differs based on a risk category status, or how risk categorisation differs across LACs.

Table 3:
STMP Risk category, 2015FY



* Orana data on STMP risk categories was provided for 30 people, two more than the 28 people identified as on the STMP during the year, thus n=215 not 213.

2.4 GENDER AND USE OF THE STMP

Of the 213 people on an STMP in the 2015FY, 199 (93.4%) were male, whilst only 14 (6.6%) were female. In the Orana LAC, six out of 28 people on the STMP were females, representing the highest number and proportion of females on an STMP out of the all the LACS. Due to the limits in the data provided by NSW Police, we are unable to determine if any of these girls or women identify as Aboriginal. There were no girls or women on the STMP in Bankstown, Blue Mountains, Mt Druitt or St Marys.

2.5 AGE AND THE USE OF THE STMP

The 2015 data confirms that the STMP is more likely to be used against young people, particularly young males.

Across the ten LACs examined, 104 (48.82%) of STMP targets were young people under 25. All of the LACs had at least one young person under 25 subject to an STMP. Across the ten LACs examined, 50 or around 23.5% of the 213 people on an STMP were under 18 years of age. Nine out of the ten LACs had at least one young person subject to an STMP. The youngest person placed on an STMP across all 10 LACs in the 2015FY was aged 11 and located in Orana LAC.

The practice of placing young people between 10–14 years of age on an STMP is concerning. In all jurisdictions in Australia, the minimum age of criminal responsibility is 10. All Australian jurisdictions have a rebuttable presumption (known as *doli incapax* at common law) that children between the ages of 10 and 14 are too young to be held criminally responsible.¹⁷

The placement of children aged 10–14 on an STMP may be inconsistent with the principle of *doli incapax*, particularly where an assessment of risk is based on factors other than a finding of guilt or conviction.

Table 4:

Young People subject to an STMP during 2015FY

LAC	Redfern	Parramatta	Orana	Canobolas	Bankstown	Blacktown	Blue Mnts	Mt Druitt	Barwon	St Marys	TOTAL
Total no. people on STMP	45	10	28	22	11	21	11	15	40	10	213
No. of juveniles under 18 on STMP during 2015FY	6	1	13	0	1	8	3	8	5	5^	50
No of young people under 25 during 2015FY	13	5	15	7	5	17	7	14	13	8	104
Age of youngest STMP target*	13	16	11	18	17	13	16	13	15	16	Youngest overall = 11
Mean Age of juvenile STMP targets*	15.7	16	14.5	N/A	17	15	16	15.6	16.4	16.8	Overall Mean approx. 15.9

* Based on age as at month placed on STMP.

^Two 17 year olds turned 18 during the year.

17 See *RP v The Queen* [2016] HCA 53 (21 December 2016).

2 The use of the STMP in Local Area Commands

Table 5:

Young people subject to an STMP at 30 June 2014FY

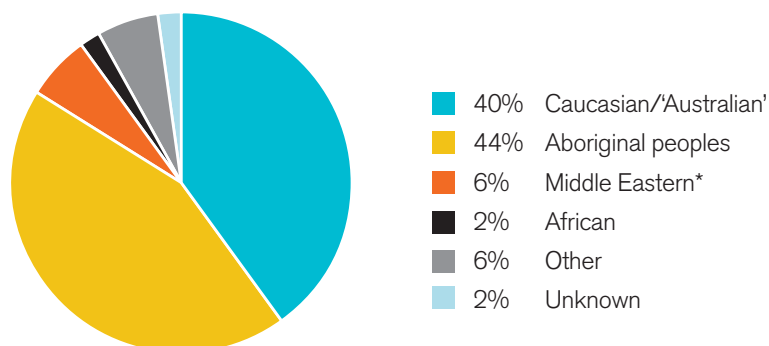
Local Area Command	Redfern	Parramatta	Orana	Canobolas	Bankstown	TOTAL
Total number of people subject to STMP	11	6	10	8	6	41
Number of juveniles under 18 subject to STMP	1	0	4	0	1	6
Number of young people under 25 during 2014FY	2	5	5	1	5	18
Age of youngest STMP target	13	18	10	18	17	Young- est overall = 10
Mean Age of juvenile STMP targets	13	NA	13.3	NA	17	13.8

2.6 RACIAL BACKGROUND AND USE OF THE STMP

Figure 1 below illustrates that, of the 213 people on STMP during the 2015FY, 94 (44.1%) were identified as Aboriginal or Torres Strait Islander. Aboriginal and Torres Strait Islander Australians are significantly over represented as STMP targets across five LACs.

Figure 1:

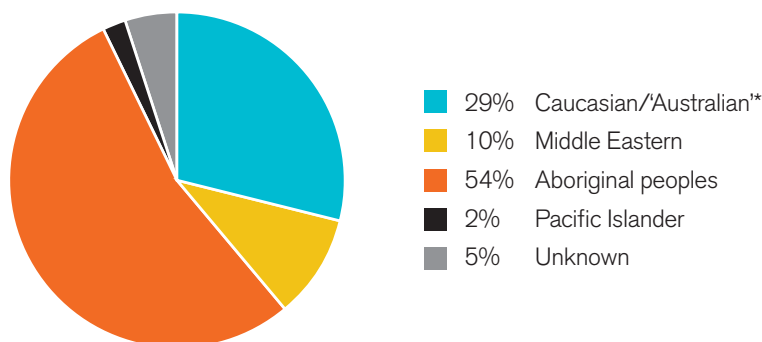
Racial Background of STMP Targets in 10 LACs, 2015FY



As Figure 2 below shows, of the 41 STMP targets current at 30 June 2014 across the five LACs for which data is available, 22 (54%) were identified as Aboriginal or Torres Strait Islander, again suggesting Aboriginal and Torres Strait Islander people are over represented as targets of policing via the STMP. People of Middle Eastern background are also overrepresented in these statistics, comprising four or around 10 per cent of the 41 STMP targets. Three of the four STMP targets identified as Middle Eastern are located in Bankstown LAC.

Figure 2:

2014FY - Snapshot at June 30 at Redfern, Parramatta, Orana, Canobolas, Bankstown LACs only



2.7 WHAT THE AVAILABLE DATA TELLS US ABOUT THE TARGETS OF THE STMP

The data made available and analysed for this report provides a limited but telling picture of who is targeted on an STMP.

The data suggests that:

- young people are over represented as targets of the STMP;
- Aboriginal and Torres Strait Island people are over represented as targets of the STMP;
- the STMP is almost exclusively focused on males;
- there is variation in use of the STMP across LACs that may not be intrinsic to different population groups but may reflect different procedures and approaches across LACs; and
- there is variation in how young people are classified into different risk categories that may reflect different procedures and approaches across LACs. The majority of young people are placed in the high or extreme risk category.

The majority of police powers in NSW are consolidated into the *Law Enforcement Police Powers and Responsibilities Act 2002* (NSW) (**LEPRA**). LEPRA was introduced to 'help strike a balance between the need for effective law enforcement and the protection of individual rights'.¹⁸ The *Bail Act 2013* (NSW) (**the Bail Act**) also provides police with powers with respect to the enforcement of bail conditions and actions taken in relation to a breach of bail.

The STMP does not give police officers any powers beyond those already set out in legislation. Our findings outlined in sections 4 and 5 indicate that individual police officers may be under a misapprehension as to the scope of their powers when an individual is subject to an STMP. In particular, the fact that an individual on an STMP is subject to regular 'targeting' through the use of stops and searches indicates that police officers consider that the STMP may stand in for reasonable suspicion as required by LEPRA.

In this way, the STMP weakens the principles of transparency and accountability that underpin LEPRA. The STMP also distorts the balance between the effective use of police powers and the protection of civil liberties.

¹⁸ The Hon Bob Debus, NSWPD, Legislative Assembly, 17 September 2002, 4846.

3 Police powers in NSW

The next section briefly overviews key, select police powers in order to highlight how STMP threatens police discretion and lawful and proper policing. The relevant law explained below is current as at September 2017.

3.1 PERSONAL SEARCH POWERS

The case studies in sections 4 and 5 demonstrate that police officers often use stop and search powers to target an individual subject to an STMP. These powers, however, can only be exercised when police have a relevant reasonable suspicion.

Police may stop, search and detain a person or object¹⁹ if they suspect on reasonable grounds that:

- The person has a stolen or illegal or dangerous item;²⁰
- The person has something that was used or intended to be used in the commission of an offence;²¹
- The person has something dangerous in public that is being used or was used in relation to an offence;²² or
- The person has an illegal plant or drug.²³

Reasonable suspicion

Reasonable suspicion is less than a reasonable belief but more than a possibility.²⁴ Reasonable suspicion is not arbitrary, and an officer must be able to show some factual basis for the suspicion. What is important is the information in the mind of the officer stopping the individual *at the time* that he or she exercised their power. The suspicion will still be reasonable even if the facts later turn out to be wrong.²⁵

For example, in the leading authority for the meaning of reasonable suspicion in NSW, *R v Rondo*,²⁶ two police officers spotted an expensive car. They pulled up alongside the vehicle and asked the driver whether it was his car, to which he responded that it wasn't. The police formed a suspicion that the car was stolen and asked that the driver pull over. The court found that the police officers had no reasonable grounds for the suspicion, on the basis that it is common for people to drive cars that they do not own and the type of car and words spoken by the driver did not give rise to reasonable grounds for the suspicion.

The court in that case also found that if the stopping of a person (or vehicle) is considered unlawful, it does not automatically follow that a search conducted as a result of the stop will also be unlawful. As the police approached the stopped vehicle, they saw items being stashed in the glovebox. The judge decided that, although borderline, this was enough to rouse a reasonable suspicion in the circumstances. The officer had therefore formed a reasonable suspicion in order to conduct the search, which was not negated by the unlawful stop.

Reasonable suspicion can arise after a person has been stopped, but before they have been detained for the purpose of a search. The point in time at which a person is considered to have been 'stopped' (that is, the point at which a person is required to comply with police demands and is no longer free to leave) is not necessarily the time at which a person is initially approached by the police.²⁷

19 *Law Enforcement (Powers and Responsibilities) Act ('LEPRA') 2002 (NSW) s 21.*

20 *Ibid* ss 21(1)(a), 21(2)(a), and (c).

21 *Ibid* s 21(1)(b) and (2)(b).

22 *Ibid* s 21(1)(c).

23 *Ibid* s 21(1)(d), and (2)(d).

24 *R v Rondo* [2001] NSWCCA 540, [53].

25 *Hyder v Commonwealth of Australia* [2012] NSWCA 336.

26 *R v Rondo* [2001] NSWCCA 540.

27 *R v Fortesque, Michael* [2010] NSWDC 272. It should be noted that this is a District Court decision, so it is only binding on the Local Court.



In *R v Fortesque, Michael*²⁸ two young people were found loitering and smoking in a dimly lit alley outside a nightclub which was well known for drug use. The point in time at which the two young people were found to have been 'stopped' by the plain-clothes police was not at the time they were initially approached and engaged in conversation. Instead, the young people were considered 'stopped' the moment the officers began questioning the young people about drugs, noticed aspects of their demeanour and formed the intention to conduct a search.

This case demonstrates that police may lawfully approach and speak to a person to ascertain more information to further develop reasonable grounds for suspicion,²⁹ although there are only a limited number of circumstances where a person is lawfully required to answer police questions, at this point. Once that suspicion is formed and it becomes apparent that the person is no longer free to depart from the police, that is the moment the person is 'stopped' for the purpose of s 21 of LEPR.

In another NSW case, young men were charged with hindering police after their car was pulled over and they were searched by police. As grounds for a reasonable suspicion to search the car, police relied on the time and place, the fact that there were three men in the car, and information from police radio that it was a 'suspect' vehicle that may be involved in offences.³⁰ The police further relied on the basis that once the car had been stopped the young men strongly objected to being searched. The charges were ultimately dismissed by the Local Court on the basis that none of the factors provided reasonable grounds for suspicion, and this decision was upheld on appeal to the Supreme Court.³¹

Consent

A police officer may search a person with the person's consent but only if the police officer has sought their consent before carrying out the search. A police officer must, before carrying out any such consensual search, or as soon as reasonably practicable, provide the person with evidence that the police officer is a police officer (unless the police officer is in uniform), and the name of the police officer and his or her place of duty.³² However, a failure by a police officer to provide their name and place of duty does not render the search invalid.³³

At common law, the position has been that police do not need reasonable suspicion if the individual consents to a search.

One example is a young man who appeared to avoid a random breath test station.³⁴ He was stopped by a police officer. The breath test was negative but a licence check showed that his South Australian licence had been cancelled. The officer and the individual had a discussion about his licence. He said he was visiting cousins in Liverpool but staying in the Formula One Hotel, and couldn't tell the officer the address of his cousins. After some time, he got out of the vehicle and smoked a cigarette. The officer then formed a view that the individual may be in possession of drugs and asked the individual 'when I search your vehicle, I won't find anything illegal in there will I?' The individual answered 'No'. Then he asked 'So can I search your vehicle?' and the individual answered 'yes'.³⁵ The Court determined in this case that

28 Ibid.

29 Ibid [22].

30 Jane Sanders, *Police Powers Update* (January 2013) theshopfront.org < http://criminalcpd.net.au/wp-content/uploads/2016/09/Police_powers_update_January_2013.pdf >, 9 (*Jane Sanders Police Powers Update*). Accessed 27 July 2017. Note: LEPR has been amended since this paper was written, however, the case law remains relevant and applicable.

31 *Streat v Bauer; Streat v Blanco* [1998] NSWSC (16 March 1998) cited in Jane Sanders *Police Powers Update*, above n 30.

32 LEPR ss 201, 34A.

33 Ibid s 204A.

34 Jane Sanders *Police Powers Update*, above n 30, 9 (accessed 27 July 2017). Note: LEPR has been amended since this paper was written, however, the case law remains relevant and applicable.

35 Ibid.

3 Police powers in NSW

the officer did not have grounds for reasonable suspicion, but the search was found to be lawful because the individual had consented.³⁶

In another case,³⁷ the Court held that a person may consent even if they are not aware that they have a right to refuse. It held, however, that it must be genuine consent and not acquiescence to what a person believes to be another person's lawful right.

3.2 POLICE DIRECTIONS

The case studies in sections 4 and 5 demonstrate that NSW Police officers also at times use move on powers to target an individual subject to an STMP. These powers, however, can only be exercised when police have reasonable grounds to do so.

If a police officer has reasonable grounds to believe that a person's behaviour or presence in a public place is:

- obstructing people or traffic;
- amounting to harassment or intimidation;
- causing fear or likely to cause fear to a reasonable person; or
- for the purpose of unlawfully deal or buying illegal drugs or intending to unlawfully deal or buy drugs;

the police officer may issue a direction.³⁸ The direction given must be reasonable for the purpose of reducing or stopping the obstruction, harassment, intimidation or fear, or stopping the supply or receipt of illegal drugs.³⁹

If the police officer gives directions to a group of people, the police officer is not required to repeat the direction to each group member.⁴⁰ Despite this, there is no presumption that each group member received the direction.⁴¹

A person must not fail or refuse to follow a direction unless they have a reasonable excuse. However, a person will not be guilty of an offence for failing to follow a direction unless it is established that the person continued to engage in the relevant conduct after receiving the direction.⁴²

3.3 SAFEGUARDS RELATING TO POLICE POWERS

There are a number of safeguards relating to the search power and the issuing of directions.⁴³

When exercising the search power or issuing a direction, the police officer must provide certain information to the person subject to the power, including:⁴⁴

- Evidence that they are a police officer (unless the police officer is in uniform);
- Their name and place of duty; and
- The reason they are using the power.

36 *R v Yana ORM* [2011] NSWDC 26.

37 *DPP v Leonard* (2001) 53 NSWLR 227.

38 *LEPRA* s 197(1).

39 *Ibid* s 197(2).

40 *Ibid* s 198A(2).

41 *Ibid* s 198A(3).

42 *Ibid* s 199(2).

43 *Ibid* s 201(1)(a)-(c) and (f).

44 *Ibid* s 202(1).

This information needs to be provided to the person subject to the power as soon as reasonably practicable, or, in the case of a direction, requirement or request, before giving or making the direction, requirement or request.⁴⁵ If a person subject to the power asks for this information, it must be given.⁴⁶ The failure to provide name and place of duty will not ordinarily render the search power or issuing of a direction invalid.

3.4 TRESPASS TO LAND

When an individual is subject to an STMP, police officers might attend their house on a regular basis. This attendance often involves police officers coming to the front door, and asking for the individual to present himself or herself.

Entering a person's land without consent is one of the clearest cases of trespass, as 'every unauthorised entry upon private property is a trespass'.⁴⁷ There are, however, circumstances in which police officers do not require an occupier's consent to enter a property and walk up to the front door.

There is an implied licence at common law to enter onto a person's property up to the front door for a lawful purpose.⁴⁸ Once someone enters the front door, the implied licence no longer applies. The implied licence can be revoked by a clear statement or action.⁴⁹ For example, in *Plenty v Dillon*,⁵⁰ a girl was to be served with a summons. The girl's father wrote to police stating that the summons was to be served only by post. Police entered onto the property and the girl's father successfully sued for trespass.

Police also do not require the occupier's consent to enter onto their property for the purpose of making an arrest, preventing the commission of an offence, and pursuant to statutory powers to enter under LEPPRA, for example, with a warrant.

It may be that police attendances at an individual's house are unlawful if they occur only because an individual is on an STMP, as the 'lawful purpose' is unclear. An attendance at an individual's house only because they are on an STMP will certainly be unlawful if the home owner or lease holder withdraws the implied licence, as occurred in the case of *Plenty v Dillon*.

If police undertake stops and searches or attend an individual's house without the lawful power to do so, it may result in civil claims against the State of NSW. Moreover, the propensity of police to undertake stops and searches, issue move on directions and attend an individual's house beyond lawful power to do so undermines police actions in circumstances where a stop and search, move on direction or attendance at a property is lawful. The YJC is aware of a number of civil claims that have been brought on the basis that powers exercised while targeting an individual subject to an STMP were unlawful.

45 Ibid s 202(2).

46 Ibid s 202(5).

47 *Coco v The Queen* (1994) 179 CLR 427.

48 *Halliday v Nevill* [1984] 155 CLR 1, 7.

49 *Halliday v Nevill* [1984] 155 CLR 1.

50 *Plenty v Dillon* (1991) 171 CLR 635.

4 Case studies

4.1 METHODOLOGY

This section presents findings from interviews conducted with 12 lawyers who collectively act for 32 clients who are known or strongly suspected to be to be subject to an STMP. Interviews were conducted with lawyers with clients on the STMP working across NSW in community legal centres, the Aboriginal Legal Service NSWACT (the **ALS**) and Legal Aid NSW.⁵¹

Each young person discussed by name in this report has been allocated a pseudonym. All identifying features in relation to the young person and the LAC have been removed in order to protect the young person's identity. There are many more young clients who their lawyers strongly suspect to be subject to an STMP, as well as family members otherwise impacted by STMP policing. The client profiles and experiences that comprise this case study data set do not claim to be representative of all STMP targets. This qualitative method creates a detailed picture of young people's experience of being on the STMP as detailed by their lawyer under interview.

First, we present a summary of the findings of the research. We then present six select case studies of young people's experiences on the STMP as an introduction to key issues and life stories. These case studies were selected on the basis that they exemplify key themes and patterns across our analysis of the larger interview data set. These case studies provide a snapshot of the diversity of young people's demographic, profiles and experiences. We present examples that include young people who have committed minor offences as well as more serious offences.

We then detail the thematic analysis of the total case study dataset (n=32) in the discussion section. We document the apparent indicia for their placement on an STMP, aspects of STMP policing and the young person's experience of STMP policing.

4.2 FINDINGS

The key findings of the qualitative case study research are that:

- The STMP has been used against children as young as ten.
- Young people have been subject to an STMP in circumstances where they have:
 - only minor, non-violent prior convictions.
 - no prior convictions but extensive contact with police.
 - prior convictions for violence offences.
 - cognitive impairments and or/mental health issues.
 - been simultaneously diverted from criminal justice (cautions or warning) or subject to a therapeutic order through the Youth Koori Court or pursuant to section 32 of the *Mental Health (Forensic Provisions) Act 1990* (NSW).
- There is no appreciable distinction in the nature of STMP targeting and the use of police powers in relation to a young person who has committed minor offences or no offences as compared to more serious offences.
- Young people on an STMP experience a pattern of constant harassment by police including use of stop and search powers by police, presentations at the young person's home akin to bail checks (although the young person may not be on bail at the time), and move on directions.

⁵¹ This research has been conducted in accordance with ethics approval granted to Dr Vicki Sentas by the University of New South Wales.

- In some cases, the STMP is being used by police as a substitute for having 'reasonable grounds to suspect' the young person has committed, or is about to commit an offence. In three case studies, the fact that a young person was placed on an STMP was found by the courts to not ground the requirement for reasonable suspicion to conduct a search. These case studies indicate a risk that the STMP may be being used more widely by police as the grounds (or part grounds) for reasonable suspicion.
- STMP policing causes unjustifiable and disproportionate impacts on young people that undermine key objectives in relation to young people in the criminal justice system, including diversion and therapeutic justice.
- The STMP is not designed or implemented in a manner that indicates its purpose or effect is preventing future crimes. The STMP does not address or intervene into the causes of youth offending. Instead, the STMP appears to be detecting minor offences, like drug possession and also risks bringing young people to the courts for policing related offences such as offensive language, assault police and resist arrest.
- The STMP has particularly concerning negative impacts for Aboriginal and Torres Strait Islander young people who experience intensive monitoring and over-policing. The STMP can generate and compound poor police-community relations and undermine well-being for many Aboriginal and Torres Strait Islander youth. The STMP contributes to the stigmatisation and criminalisation of Aboriginal and Torres Strait Islander young people and furthers their disproportionate contact with police. The STMP also disrupts family relations where a young person is living with their family, and is subject to repeated visits by police at their home.
- Aboriginal and Torres Strait Islander young people are over represented in the Juvenile Justice system and underrepresented in diversionary programs (see section 6).⁵² The role of the STMP in potentially furthering these inequalities requires further study.
- The STMP has been used against young people who have mental and cognitive disabilities where their disabilities may be the reason for their offending. This raises particular concerns in regard to the efficacy of these young people being placed on the STMP and its inconsistency with therapeutic approaches in the criminal justice system.

4.3 SELECT CASE STUDIES: SIX EXPERIENCES OF THE STMP

Dean

Dean is 16 years old and his contact with police began at the age of 15. His lawyer characterises his offending as minor and not extensive. His offending relates largely to graffiti. He has received a caution for cannabis possession and for a minor trespass offence. Dean has been convicted for one or two criminal damage charges in relation to graffiti. His lawyer strongly believes Dean is on an STMP on the basis of the pattern of police targeting evidenced in Dean's police records. Dean is routinely targeted by Proactive Crime Teams and intelligence reports about several events have been sent by NSW Police to the Australian Criminal Intelligence Commission (ACIC).

At the time of writing, Dean had experienced STMP policing for a year and a half. Dean was stopped and searched 23 times in ten months, with ten searches occurring in the first three months. The frequency of checks conducted by police ranged from once a week to once a fortnight, as evidenced in police records. Records indicate he was frequently stopped and searched whilst at train stations and on trains. Dean is on occasion also stopped when he is walking down the street. The pattern of Dean's experience of policing is that after he is asked to produce his train ticket, police then conduct a Central Name Index (CNI) check and then stop and search him on the basis of his past graffiti offences. In one stop and

⁵² New South Wales Bureau of Crime Statistics and Research, 'New South Wales Custody Statistics Quarterly Update December 2015' (Report, 2015).

4 Case studies

search police found a 'texta' pen on Dean's person. His mother explained that it was bought for school and Dean was not charged with an offence.

Dean's police records indicate a range of justifications recorded by police as grounds for stops and searches. This included that persons of interest who wear Nautica clothing are 'known to commit criminal damage offences' (graffiti); that young people who get on the last carriage of a train and wear Nautica are known to commit criminal damage; and that Dean was with a group of young people.

Dean and his mother both have a very poor relationship with police. Dean's mother is very supportive of him and reportedly will often challenge the police on why they target Dean. Police are reported to be dismissive and rude to Dean's mother and his lawyer is of the opinion that this may be because she is 'standing up for him'. Dean feels constantly harassed by police and his mother is distressed that he is being harassed for no apparent reason. Dean is described by his lawyer as an articulate young man who can clearly identify his rights and the problems with how police exercise their powers without legitimate cause. His lawyer states, 'Dean wanted to be a police officer when he was younger. But definitely not now. He told me "I thought they were there to protect people and now I don't feel like that anymore".'

Toby

Toby was 16 years of age when it was confirmed that he was on an STMP as noted in his police fact sheet in his prosecution for graffiti offences. Toby has also committed some violence offences and his offending is described by his lawyer as a problem for the community.


Police had been a regular part of Toby's life at an early age in relation to parental domestic violence and have remained a regular part of his life since. Police routinely pulled Toby aside when hanging out with friends – who apparently do not have offending histories; ask Toby to turn out his pockets, and send him on his way. On occasions police would conduct a bail compliance check, despite the fact that Toby did not have an enforcement condition attached to his bail conditions. Toby's lawyer identified a number of searches have been unlawfully conducted, and also documents many instances of unlawful use of police power.

Toby's father had spent some time in jail, and on occasion police were reported to have teased Toby about his father. Toby's lawyer described his experience of being on STMP as a significant barrier to having a normal life that countervailed against Toby's efforts to study at TAFE and spend time with friends. His lawyer reports that Toby's movements have been constrained and he feels that he can't leave the house or go anywhere other than to TAFE.

Police communicated to Toby's lawyer that Toby's specific STMP plan included the authority for police to enforce bail conditions and 'use LEPPRA powers when around train stations'. Toby's lawyer understood this not to refer to police obligations to comply with the provisions of LEPPRA when such discretion was exercised, but rather understood it to be a direction to stop and search Toby when police saw him. Toby's lawyer understands this practice to constitute a fundamental breach of LEPPRA.

David

David is a 15-year-old Aboriginal young person who was put on the STMP by a city-based LAC. David has prior convictions for theft offences and no history of violent offending. The majority of the police contact David experienced was a result of him being at local landmarks with his friends in places where teenagers routinely gather and out on the street generally. Police cars were also routinely parked outside David's family home, causing stress for the entire family. David reported it to be particularly stressful when officers would knock on the door to have a chat, to demand David's whereabouts from his family and to



express their disapproval of his comings and goings to family members. The ongoing stress for David's family, not only from police presence, but also David's behaviour, was causing serious problems for the family's well-being.

One of David's siblings manifested an anxiety disorder at this time and was unable to complete their HSC. David's mother reported that the constant police presence and stigma led to their lease not being renewed. The family eventually moved out of the area, and their lawyer believes the change of address was a direct result of police harassment. His lawyer then lost contact with David and was not able to make a formal complaint to the NSW Police Force.

Michael, Corey, Adam and Alicia

Michael, Corey and Adam are siblings of Aboriginal heritage. Only Michael (aged 23) is subject to an STMP. His criminal history relates to driving and property offences. Police stopped Michael every time he drove. On the occasions that Michael's girlfriend, Alicia, was also in the car, police would spend a significant part of the interaction telling Alicia that Michael was a bad person and that she had to stop seeing Michael. Michael does not have any domestic violence offences, nor was there any suggestion that Michael was suspected of domestic violence. On several occasions police have also stopped and searched Alicia while on her own.

Michael's younger brothers Adam and Corey, both under 18, received increased police attention after Michael was placed on the STMP. His lawyer believes this attention was simply by association as Adam and Corey did not have a substantial criminal history. This caused serious issues for the boys due to the pressure police exerted on the entire family. Police would present at relatives' houses, asking if Michael was there: 'On a couple of occasions, they simply said, we know he's here and came in on pretence of having a power of entry.'

The experience of constant police harassment caused considerable family distress. Corey, upon being apprehended by the police, had a serious mental health episode in police custody and had to be taken to hospital and put on suicide watch. Sometime afterwards, 15-year-old Adam was so distressed by the level of police interaction with his family that he presented to the local police station asking to be tasered and shot by police, asking 'Why won't you leave my family alone'. His lawyer explains that whilst he was not aware of the entirety of Corey's personal situation, 'he certainly felt persecution' and that Adam was not coping with the continued police harassment of his family.

Bill

Bill is an Aboriginal child of 13 years of age in state care with multiple and complex needs, including suspected cognitive impairment. Bill has experienced severe disadvantage in his formative years including housing instability and conflict between his natural parents. There has been FACS involvement with the family, with reports of concern for neglect, domestic violence and substance abuse. Bill is disengaged from schooling and no longer attends at all. Bill has a substantial criminal record beginning at around age 10 for robberies, break and enters and assault. Bill's offending pattern is in company with his brother. Bill has spent time in juvenile justice custody and has also been subject to a control order.

Bill's interactions with police either as a victim or as a person of interest have left him very well known to police in his local area. His lawyer is concerned that despite his young age and vulnerability to risks of violence and drug exposure, he continues to be treated punitively by police. One police record states: 'Please do not believe a single world POI says, he'll do anything and everything to avoid arrest and run from police including crying to see his mother.'

4 Case studies

Bill often feels unfairly targeted by police and is frequently pulled over and searched when there is no lawful basis to do so identified on the police database, known as the Computer Operational Policing System (**COPS**) event record. The following is an example of the type of conduct that has been formally complained of:

Bill was released from custody and dropped home by a Juvenile Justice Officer around midday. Bill had a shower and walked out of his home to go to the shops. On his way back home while waiting at the bus stop two police officers drove past him, saw him and turned around and came back and got out of the car. They asked for Bill's name and then said words to the effect of 'We remember you from [another locality], you're a thieving little dog'.

The incident is not isolated but an example of the types of incidents that occur frequently. His lawyer believes that in Bill's case, the police have decided on particular powers as the preferred strategies to use on Bill and focus all their attention to this commitment: 'I guess for how young he was I couldn't understand why the police were so ready to treat him like a hardened criminal'.

Greg and Travis

Siblings Greg and Travis are Aboriginal children aged 12 and 14 respectively who live in a rural NSW town. Travis is believed to have been on a STMP since he was 13, and the same lawyer acts for both brothers because Greg is also receiving unwarranted and sustained police attention. Travis has a history of assault, larceny, goods in custody suspected of being stolen and aggravated burglary. Whilst Travis was charged and convicted for aggravated burglary, his record indicates he has predominantly been cautioned for his offending. Travis has convictions for stolen credit cards that were used exclusively to buy food. Greg has one or two priors for larceny and is routinely targeted by police when in the company of his brother, or often when they are with groups of other children known to the police.

Greg and Travis are in ongoing trouble with the police. They are always targeted by the LAC's 'Target Action Group' and often by the same police officer. Two intelligence reports have been sent by police to the ACIC. One report concerned a stop and search of Travis outside a supermarket where no items were found. The second report by the LAC's Target Action Group to the ACIC referenced police suspicions that Travis may be involved in a burglary in the local area, but he was not charged. It is not clear from police records why the ACIC were given this information.

COPS records indicate that police stopped the brothers because they have an 'extensive history of contact with the police'; that the brothers were 'together and unsupervised'; that they were hanging out with a group of young people who get into trouble, and 'argumentative' towards the police. Travis's arguing back has been recorded in COPS event records in the following way: 'Why am I always being stopped and searched?', 'Leave me alone' and 'You are just targeting blackfellas.'

Travis was stopped and searched up to three times a week for some months and was also routinely moved on from public places. Travis, Greg and their mother complain that the boys can no longer be in public places. The police constantly control and monitor the time that the brothers spend in public, whether it's at the basketball courts, the oval or the shopping centre. The boys are moved-on from public places on a regular basis. The boys' mother has complained about their arrests being conducted in an aggressive and heavy-handed manner and reports the police use of derogatory language.

5 Discussion

5.1 YOUNG PEOPLE HAVE A RIGHT TO KNOW THAT THEY ARE SUBJECT TO AN STMP AND THE RISK CATEGORY

Lawyers interviewed for this research suspected that many more of their young clients may be on an STMP because the client is receiving an STMP-like level of attention but it cannot be conclusively confirmed.

A person on an STMP has no means available to confirm that they are on the STMP, as demonstrated by the NCAT decision in *DEZ v Commissioner of Police, NSW Police Force [2015] NSWCATAD 15* discussed in section 2, or to know their category of STMP risk (Extreme, High, Medium, Low).

In the absence of any express legal right for a person to be notified that they have been placed on the STMP, young people come to know they are on an STMP in a number of ways.

A key pattern is that young people are told inconsistent and confusing reasons why they are subject to police attention. Across case studies, reasons given by police to young people to justify their interactions include: 'we know you'; 'we have intelligence on you', and 'you are on a list to be searched'.

Often, police will tell the young person they are on the STMP in order to secure consent to the police power they are exercising. Many young people found out they were on an STMP after asking the police why they were being monitored, or stopped and searched. Police may genuinely believe that in telling a young person that are on the STMP they are discharging their obligations under LEPRA to provide the young person with the reason for exercise of a search power. As outlined in section 3, being placed on the STMP is not a valid legal reason to ground the reasonable suspicion police require for search.

In other cases, individuals subject to an STMP may be targeted by police for some time before being advised or finding out that they were subject to an STMP. In most cases, individuals are subject to an STMP without ever finding out the reasons why.

Risk category

It is not possible for lawyers to identify the level of STMP risk at which their clients have been categorised, nor advise their clients on the implications of being placed in one category of risk over another. Moreover, without knowing how risk is defined and measured, lawyers cannot advise their clients of the basis upon which they have been placed on the STMP in the first place.

Our research reveals no discernible consistency in the pattern of policing between those subject to an STMP with a history of minor or very little offending, compared with those with a history of more serious prolific offending. Young people with minor or no offending histories were subject to policing several times a week while those with more serious offences were subject to similar levels of targeting. For some young people, contact would occur several times a week and then shift to weekly, or several times a month. Consequently, the research does not allow us to speculate on the STMP categories in place for the individual young people in our case studies. Further investigation is required to determine whether those who have committed only minor and occasional offences are targeted in the same manner as those who have a history of more serious prolific offending.

There should be transparency regarding the category that each individual is subject to. The criteria for inclusion on the STMP should be made publicly available and the reasons for being placed on the STMP should be provided to the individual (See Recommendation 4).

5 Discussion

5.2 THE REASONS THAT YOUNG PEOPLE HAVE BEEN PLACED ON AN STMP

The STMP contemplates levels of police interaction disproportionate to the conduct or threat that young people present at the time of the use of the power. STMP risk appears to be calculated and categorised in advance of any instance of offending, in part, through police assessment of both prior offending, and prior contact with the police.

The majority of clients represented in our case studies have minor offending records. Most case studies involved crimes against property, including graffiti offences, theft and burglary offences. Several clients have only been cautioned for drug possession.

Some clients on an STMP have committed violence offences, some serious and described as a problem for the community.

The types of violent offences committed by young people range from school yard 'affrays' to common assault, which in many cases do not constitute serious violence offences. For example, one Aboriginal child on an STMP (aged 11) was charged with common assault for throwing a water bottle at their youth worker. Whilst this was their only offence, this child had extensive COPS events records indicating extensive contact with the police whilst in public spaces, including numerous stop and searches and move on directions. The case studies raise concerns that a number of clients were placed on an STMP for having extensive contact with the police, ('known to police') but do not have extensive offending.

Some young people felt targeted due to their friendship groups and associations. Ali's lawyer believed that in spite of his very minor offending, his very large number of COPS events records indicate he may have been put on an STMP due to his association with offending peers (see page 28). Dean (page 21 - 22) believed that he was subject to an STMP because his friends were known to police. The collateral effects of the STMP on the family members of those on an STMP are further discussed below.

5.3 IMPLEMENTATION OF THE STMP: NO GROUNDS FOR REASONABLE SUSPICION

Lawyers' accounts of how their clients are policed under an STMP provides insight into the exercise of police powers invoked under the auspice of the STMP, and the relationship of use of the STMP to the law.

There are two key forms of police powers experienced by young people subject to an STMP. Firstly, young people are repeatedly stopped and searched in public, often seemingly without the requisite legal threshold of police having a reasonable suspicion, and sometimes subject to a move-on direction at the same time. Secondly, police come to young people's homes, asking for the young person to present at the door. On some occasions police have asserted a power of entry into the young person's home.

Other police powers may sometimes also be exercised against an individual subject to an STMP. Under the Bail Act 2013, bail enforcement conditions, including curfew checks at a person's house, can only be included as a bail condition by a Court.⁵³ Once a bail enforcement condition with respect to curfew is in place, NSW Police officers may attend a person's house to check that they are complying with their curfew.

In addition, being on the STMP may also trigger being subject to 'anti consorting laws'.⁵⁴ The offence of consorting with a convicted offender on two or more occasions was reintroduced with tougher penalties, with the aim of targeting organised crime, particularly outlaw motorcycle gangs. A NSW Ombudsman review into the laws, however, published in 2016, noted that in many cases NSW police officers were targeting children, homeless and Aboriginal people.⁵⁵

⁵³ *Bail Act 2013* (NSW) s 30(3).

⁵⁴ *Crimes Act 1900* (NSW) s 93X.

⁵⁵ Alex McDonald, *NSW Consorting Laws rebuked by acting Ombudsman after 'high level of police error' revealed*, ABC news online (20 June 2016) <<http://www.abc.net.au/news/2016-06-20/acting-nsw-ombudsman-rebukes-use-of-consorting-laws/7527560>>.

Charlie Forster, who lives with an intellectual disability, and was 21 at the time of his conviction, was said to be the first person to be sentenced to jail for the offence of consorting, and was also subject to an STMP. After a complicated appeal history, on 20 April 2017, a decision was handed down by Justice McCallum in the Supreme Court of NSW, who found that Mr Forster was not 'consorting' within the definition set out in the legislation. Her Honour Justice McCallum stated that:

The evidence before the Magistrate also included a statement from the Inspector at Inverell Police which gave a 'disarmingly frank account' of the process by which Mr Forster came to be charged. The Inspector said that police at Inverell had discussed the new consorting legislation and its possible use in dealing with recidivist offenders and 'crime hot spots' in Inverell. In late April 2012, Mr Forster had been nominated for inclusion in a "Suspect Target Management Plan". On 29 May 2012, Mr Forster was formally made a 'target' of that plan, with the result that staff at Inverell Police were tasked 'to proactively interact' with him. That evidently prompted a constable at Inverell to review intelligence reports relating to Mr Forster with Sergeant Gillespie. The constable 'observed that there was enough to charge him', which they did.⁵⁶

Mr Forster's placement on the STMP generated the intensive police surveillance of him that brought the consorting charge into existence. The use of the STMP in Forster's case raises a number of questions relevant to this study:

- Rather than preventing crime, is the STMP potentially criminalising young people for mere association with their friends?
- Is a young person's placement on the STMP influencing police discretion to lawfully exercise powers or initiate charges against young people?

Andrew

Andrew has been on the STMP since he was a minor. His lawyer describes him as 'non-Caucasian'. His contact with the police first began when he was 15 after he was charged and convicted of robbery, assault and affray. Andrew now has a serious criminal history, is presently over 18 and on parole for an armed robbery. Andrew was 18 years of age when he was subject to ongoing police harassment over a period of approximately 10 months, characterised by repeated stop and searches. In one incident, Andrew was walking in a park when two officers decided to stop him. Andrew was wearing headphones and so he didn't hear the police yelling out to him to stop, and he continued walking. The police chased after him stopped and then searched him, finding a small amount of cannabis, and charged him with possession. Andrew has never been previously charged with a drug offence. The reasons recorded by police for the search were that Andrew was on an STMP, that he was observed to be moving his hands in his pockets for around 8 seconds after he was stopped, and that he was known to police. The Magistrate subsequently found the police search to be unlawful as it was not conducted with reasonable suspicion.

Our research indicates a pattern whereby police believe that the fact that an individual is subject to an STMP gives them sufficient reasonable suspicion to exercise a range of powers. A common theme across our interview data is that police indicate to the young persons the fact that they are on an STMP as the reason for the interaction. This practice has been evidenced in court proceedings and discussed below. The STMP has been found to be an insufficient basis to ground reasonable suspicion for stop and search powers in at least three criminal proceedings that we are aware of.

⁵⁶ *Forster v Director of Public Prosecutions* [2017] NSWSC 458 [26].

5 Discussion

Andrew's lawyer describes the problems with the police evidence presented in the local court in prosecution of Andrew's drug charge, and why the STMP cannot provide reasonable suspicion:

They [police] didn't quite say, "He's on an STMP, therefore we can search him whenever we like." ... but they just said, "Well, there's lots of intelligence on him and he's on the STMP." I cross examined the officer because I felt I was on fairly solid ground because I knew there was nothing in his history that directly pointed towards drugs and just some general criminal history is not enough to ground a reasonable suspicion. I asked the officer, "What does it mean to be on STMP? What are you tasked to do?" "We have weekly briefings and we're tasked to engage them in conversation as much as we possibly can. We're tasked to keep an eye on them, to engage them." The Magistrate was quite critical of the police officers and said, "I've heard all this evidence that he's on an STMP but I've got no idea of why." The officers couldn't tell the court why. "Does it have anything to do with drugs? He might be on an STMP for goods in custody, for all I know. How would I know?" She found the search illegal. But it worries me on a much broader level that the police don't seem to have a clue where their powers begin and end.

Lawyers we spoke with were concerned that their young clients are increasingly being the subject of generated intelligence reports on COPS. There are several instances of intelligence reports being forwarded to the Australian Criminal Intelligence Commission, in the absence of a young person having been charged with an offence that would warrant this intelligence sharing. The indication of intelligence reports as either a reason to be put on an STMP, or as a result of being on an STMP raises significant issues for grounding a legal basis for stop and search.

Ali

18 year old Ali is of Middle Eastern and African background with emerging mental health issues. Ali has one minor prior conviction for goods in custody; however, he has extensive COPS events records, evidencing high levels of contact with the police, with many 'intelligence' entries. His lawyer believes the COPS records and the intelligence is related to the people Ali was hanging out with as he has very little substantive criminal history. Ali was constantly approached by police and stopped and searched whilst on an STMP, including being given warnings by police for the offence of consorting. In one instance, Ali was in a car with several friends, and they were pulled over because one of the tail lights was out. The car and all the occupants were searched. Police found a phone on Ali that they suspected was stolen (which was subsequently confirmed to be his phone), and a small amount of cannabis. The magistrate excluded the search evidence on the grounds that it was unlawfully obtained. For Ali's lawyer: "The police just seemed to think there's lots of intel on him and he's on an STMP, so that's enough."

We understand that some LACs have a board that displays STMP target photographs to enable police to identify and target people. For Aboriginal youth, the practice of being stopped on the basis of being on a 'list' has been identified by several lawyers. This practice is concerning and it reflects more broadly the way that the STMP structurally enables the unlawful use of police powers.

Kieran

Kieran is 14 years old, and is confirmed to be on an STMP though he has no prior charges. He lives in a regional NSW town. Police records indicate Kieran has been officially stopped 28 times but his experience of being searched was much more frequent than that recorded.

On one occasion Kieran was strip searched on the side of the road by six officers when walking home in the middle of the day. A small amount of cannabis was found in his underpants and he was

charged with possession. His lawyer successfully challenged the legality of the search in court, as Police claimed that Kieran being on an STMP was sufficient grounds for a search, however the court found this not to be sufficient cause. His lawyer described the impacts of sustained police attention on Kieran: 'It was a pretty humiliating experience for him. His experience, and from his family and his aunty, was that him and his cousins were just targeted constantly and that was quite borne out in the COPS records. I think there's a real issue, especially in small towns, as I said, where Indigenous people are just much more visible. We have learnt that often photographs are sent around to the police on the emails or whatever so that they're familiar with the faces of the people that they should be stopping and searching – according to them.'

In Andrew, Ali and Kieran's cases, the unlawful searches detected minor, summary drug possession offences, rather than the serious or violent crimes that pose a serious risk to the community. Importantly, when prosecutions fail due to the unlawful use of police powers, public confidence in the criminal justice system is eroded.

Recommendation:

NSW Police provide all police officers with formal training on the STMP which:

- i. Clarifies its status as an intelligence tool;
- ii. Provides guidance on the criteria for inclusion and exclusion from the program and the alternative programs available;
- iii. Sets out its operational requirements, and limits; and
- iv. Provides guidance on the relationship of the STMP to the law. For example, training should clarify that a persons' inclusion on an STMP cannot provide a basis for grounding a reasonable suspicion (either on its own or together with a number of other factors) under LEPPRA.

5.4 THE IMPACTS OF THE STMP ON ABORIGINAL YOUNG PEOPLE

The STMP poses significant risks to effective and fair policing because it fundamentally undermines the foundations for positive police-youth relations (see sections 6 and 7). As illustrated in this section, the STMP may in particular intensify the conditions that escalate conflict between young Aboriginal and Torres Strait Islander peoples and police.

STMP policing appears to be premised on the repetition of the use of police powers against young people as a disruption to deter their presumed future offending. The STMP contributes to the harassment of those who are subject to it and this harassment is evidenced in the pattern of extensive policing experienced by young people in this research.

It is concerning that the STMP appears to reinforce antipathy by the police against certain young people. Greg and Travis (page 24) were subject to aggressive and heavy handed conduct as well as derogatory language. Their lawyer described their relationship with police as 'a two-way hatred'. Lawyers interviewed for this research reported all their clients on an STMP to feel unfairly treated, discriminated against and victimised. As one lawyer put the problem: 'Police have an obligation to be civil towards them. They are kids'.

A pattern across case studies is that young people's experiences of being unfairly targeted can contribute to their offending patterns.

5 Discussion

James

James is a young Aboriginal young man living in a regional town in NSW. James has lived in the town on and off over the years with a relative. James has no criminal record in NSW. When James recently moved back to the town, he was placed on an STMP.

Police officers told him it was a 'stop and search order'. Over a period of several months, James was subjected to a number of stops and searches, at least once a month. He was also subjected to repeated attendances by police at his home, sometimes once or twice a week, often late at night. The attendances at home disrupted his family life, especially as younger children also lived in the house. The stops and searches felt like harassment, as James felt that there was often no reason for them. On one occasion, James was stopped and searched because he raised his t-shirt and pointed at his skin as police officers drove past. Justifications for the searches often included the time of night and the location that James was in.

Finally, one afternoon, police told James to stop, and then capsicum sprayed and arrested him using force when he questioned their power to stop him. The charges against James of assault and resist a police officer were withdrawn at the hearing some months later. After this incident James was not stopped and searched again, although police continued to come to his home for some weeks afterwards.

Henry

Police informed Henry that he was on the STMP in response to Henry's query as to why he was constantly being stopped and searched and visited at home. Henry's prior offences include robbery in company from five years earlier. Since that time, Henry has committed a number of offences (assault and intimidate police) all directed against the police. Henry's criminal history does not indicate violence offences against any members of the public. Police visited Henry at his house on several occasions. When Henry was in public, for example at the train station or a shopping centre, he would be continually approached by police. His lawyer believes that Henry's offending against the police continues to be generated through police contact due to his placement on the STMP. Henry's STMP encounters with police triggered a 'perpetuating cycle' whereby Henry got angry and was charged with police-related violence offences as a result. Henry is of African descent and his family is convinced that there is a race element involved in his encounters with the police.

Young people, particularly those who did not know why they were subject to the STMP, experienced heightened and exacerbated feelings of being unfairly targeted. In particular, when a police power is exercised in circumstances where the young person is not offending, this generates vulnerability, exclusion and not least, antipathy against the police. For one Legal Aid lawyer with a large number of Aboriginal clients, the secrecy and arbitrary nature of the STMP amplifies historic patterns and experiences of policing:

Nobody (in Aboriginal and Torres Strait Islander communities) knows anything about the STMP. Police harassment and targeting is so normalised that people definitely understand that it's not right and that it's really unfair, particularly coming to their house and always stopping them around the place, and having that real sense of being under siege from the police. People have a consciousness of that but no knowledge of STMP.

Lawyers who act for Aboriginal clients pointed to patterns of discriminatory targeting of Aboriginal youth through the STMP mechanism:

In that particular Local Area Command, there has been a history of police officers feeling as though – the dynamic is that they will stop and interrogate young Aboriginal males. Some will do it in the ‘have a chat’ sense. Others will be more abusive. Some will be more cunning and capture or initiate interactions by laying a foundation for suspicion on reasonable grounds. Now, it’s a façade, because they don’t actually suspect anything. They know that what they’re saying is not true – they don’t actually believe what they’re saying. But they will walk up to a young man or group of Aboriginal kids in that area and say that phone looks stolen. I don’t think that’s yours. And it goes from there. So they’ve paid sufficient lip service to LEPPRA that they’ll be able to do a stop and search.

It has been argued that ‘all the available evidence demonstrates that discretionary decisions that are made work against the interests of Indigenous people’.⁵⁷ An example of this provided by Cunneen, White and Richards is that of the death of Aboriginal teenager TJ Hickey, who was impaled on a metal fence while riding his bike in Redfern. Mr Hickey was classified as a ‘high risk offender’ by NSW Police, and was subject to constant scrutiny.⁵⁸ On the morning of his death he had been followed by police. It is argued that at the time of his death he was being chased by police.⁵⁹ Evaluations of stop and search powers have shown that they are used more in regional areas with high Aboriginal populations, such as Bourke and Brewarrina, despite the fact that in these towns, nearly 90 per cent of searches resulted in nothing illegal being found.⁶⁰

In contrast to circumstances such as those in our case studies where a young person is not behaving in an ‘anti-social’ manner, we acknowledge that the behaviours and offending of some young people presents particular challenges for police. It appears that many young people on the STMP have highly challenging behaviours that are a problem for the community. We do not believe, however, that even in these circumstances that the STMP is the appropriate way to respond to these behaviours. We discuss the fundamental problem with placing vulnerable and marginalised young people some of whom have cognitive and mental disorders and disruptive behaviours on an STMP below, and present alternatives, such as Youth on Track and the Youth Koori Court, at section 6.8.

5.5 THE IMPACTS OF THE STMP ON ABORIGINAL YOUNG PEOPLE: THE DISRUPTION OF FAMILY RELATIONS

In many of the case studies outlined in this report, Aboriginal family members are being particularly negatively impacted upon by their child’s STMP status. One lawyer described the experience of entire families being ‘leaned on’ as part of a STMP strategy as a common occurrence: ‘I know that it happens in many places around New South Wales but the approach that police take of using discretionary powers to drive a family out, ... the STMP is being used as a mechanism for that, in some of the stories that we’ve been told.’

Fifteen-year-old David’s experience of being on the STMP (page 22) resulted in harassment that caused his family to leave the Local Area Command. For his lawyer, David’s offending history of thefts did not justify the deleterious effects on his family: ‘Property offences were being pursued in a fashion where the main victims of the situation were actually his family, rather than any of the property owners the police were ostensibly trying to protect’.

⁵⁷ Chris Cunneen, Rob White and Kelly Richards, *Juvenile Justice: Youth and Crime in Australia* (Oxford University Press, 2015) 153.

⁵⁸ Ibid 154.

⁵⁹ Ibid.

⁶⁰ Ibid.

5 Discussion

The experience of Michael, Corey, Adam and Alicia (page 23) warrants attention for how the STMP may be contributing to the intergenerational targeting by police of Aboriginal families. The women in the family (Michael, Corey and Adam's mother and aunts) were very distressed by the level of police attention. Their lawyer stressed that 'some of the things that the police were saying that they would do to Michael when they caught up with him', explained by the lawyer as implicit and explicit threats of incarceration and violence, particularly impacted the women in the family: 'Again, coming from the mother and aunts, that sort of comes in the context of them being old enough to remember the particularly dire consequences of the bad old days. The knock-on effects on the younger brothers – they certainly became disaffected, traumatised, and violated by this level of attention from police.'

Ross and Ian

Siblings Ross and Ian are Aboriginal young people both under the age of 18. Ross has been confirmed to be on an STMP but Ian appears to be at times, confused by police for his older brother. At other times, it appears that Ian's contact with the police is because of his association with his brother. It is their lawyer's conclusion that: 'They treated the presence of the older brother on an STMP as also a license to stop the younger brother and interrogate him'. In one instance Ian was questioned about whether his mobile phone was stolen. Ian was subsequently searched on the basis of suspected stolen goods in custody. It was later established that the phone was Ian's and not stolen. His lawyer puts the attention the brothers receive in the broader context of the LAC's over-policing of Aboriginal young people.

The STMP exacerbates the marginalising impacts of extensive police contact for Aboriginal and Torres Strait Islander peoples by further stigmatising young people in their communities.

One lawyer commented:


Extensive police contact is in and of itself socially disadvantageous because the stigma – one of the things that I really notice a lot is that if families don't want that person who the police are always coming after at the house because it exposes the rest of us to that, then that person becomes a bit of an outcast from the family and that's not good for people. So you see that a lot with post-release. Those people become even more socially marginalised and that's not good for families and that's not good for integration to the community and I think that kids experience that stigma a lot as well I think, particularly if they've got behavioural needs which go neglected or unsupported for such a long time. Then those things become reasons for the police to target them, the anti-social behaviours become reasons to go after them because they manifest in ways in which the police consider to be offending or criminal behaviours.

The cycle of social disadvantage and its contribution to offending behaviours needs to be considered in relation to the policing of Aboriginal and Torres Strait Islander peoples, both young people and adults. Our research indicates that the STMP is compounding the criminalisation of social disadvantage and being an Aboriginal and Torres Strait Islander young person.

5.6 THE IMPACT OF THE STMP ON THERAPEUTIC JUSTICE AND DIVERSION

Several Aboriginal youth appear to have been either placed on an STMP, or are receiving STMP like levels of attention, whilst being subject to Youth Koori Court Programs. We discuss the Youth Koori Court in Section 6.8.

Young people who experience targeted policing, whether because of the STMP or not, are finding participation in Youth Koori Court Programs difficult.



Aboriginal and Torres Strait Islander young people participating in the Youth Koori Court should be removed from the STMP in order that participants are given the best opportunity for succeeding in Youth Koori Court programs.

Cal and Ryan

Cal and Ryan come from two large Aboriginal families that are well-known to police, who have experienced extensive, intergenerational contact with the police, the courts and Corrective Services. Cal and Ryan have a group of friends who are always in public spaces and well known by services including Juvenile Justice, the police and the ALS. These young people self-identify as belonging to two particular groups with identified names and are surveilled by police on the basis they are gangs and subject to constant interaction. These two groups of young people are known to be feuding in the area and this draws them to the attention of police. Their lawyer believes they receive attention not for any alleged individual acts of wrongdoing but because they are known to police. Ryan has spent time in custody in juvenile detention, and both Ryan and Cal are recently engaged with the Youth Koori Court. Cal and Ryan's lawyer believes that being on an STMP is a risk for being able to complete the program successfully due to the increased likelihood of police attention, from being known to police: "Their participation in the Youth Koori Court is at risk... them being well known to the police is a risk for their success in the court process."

John

John is a 15-year-old Aboriginal young person from Western Sydney. He has very unstable housing, and is very transient. John has an inconsistent relationship with family members with a pattern of needing to leave home after family breakdown. John has had some levels of involvement with FACS. John's offending history largely comprises of drug use and possession. His lawyer suspects he may be on an STMP but is not sure if the high levels of unwarranted use of powers are because he is known to police across several LACs. John has had a continuous and large volume of police contact since he was a small child due to incidents where the police have been called to the family home. From about the age of 12 police contact with John shifted from regarding him as a vulnerable child requiring protection to being a person of interest, targeted as an offender. His lawyer explains he is subjected to frequent harassment and unlawful searches.

John's experience of police encounters are all in public spaces. In one recent incident, John was searched three times within one and half hours without reasonable cause. In the first encounter, he was seen by police at a shopping centre, asked questions and then searched. Shortly after, he was searched again by different officers at a train station. Police confiscated his ticket bought as concession without proof of concession. Police said to John "Where are you going" He replied "to [redacted] suburb" and police responded - "Not any more". John was then issued with move on directions to leave the train station and directed not to return for two hours. John reports being frequently subject to move on directions across two LACs.

John has been participating in the Youth Koori Court for his drug offences, where he is engaged in skills training programs, and counselling for drug and alcohol issues. John's progress is however being hindered by police contact particularly through the use of frequent move on directions. His lawyer's view is that this excessive police harassment is 'impacting on his well-being' and undermining efforts to complete his Youth Koori Court program:

"He describes it as being really frustrating when he's participating in the Koori Court process where he's making lots of undertakings to do really positive things for himself but that's being hindered by the police contact where he's actually not doing anything just sitting at the train station and told to leave for no

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particular reason. That's really undermining his attempts to participate in the Koori Court process. Also I think it really wears him down. He's experiencing pretty severe homelessness at the moment....so [policing] impacts on his wellbeing as well.

All these programs require him to be out and about to see social workers and require travelling some distances. But every time he does, he encounters police officers who embarrass him. For example, when he was at the shopping centre and the police said: "Have you got receipts for all your purchases" and went through all of his things, and he had receipts for everything. That was in front of the main entry to the shopping centre and he hadn't done anything wrong. Then for that to occur again shortly after at the train station, that type of thing really upsets him.

He's a young person who's at risk and very very vulnerable yet is being targeted in a way which criminalises those issues. So, his homelessness, the fact that he is always at the station or walking around, he's just there as an easy target when he has all these avenues which if they (the police) had a different response, may not actually...I think that one of the key things is that the police having contact with him doesn't prevent any crimes. It usually just disadvantages him."

5.7 THE IMPACTS OF THE STMP: YOUNG PEOPLE WITH COGNITIVE AND MENTAL IMPAIRMENT

Aboriginal young people with cognitive and mental impairment

Many of the case studies in this study closely resemble the patterns of police surveillance, frequent stopping and searching and provocative language documented in many of the case studies analysed for the report 'A Predictable and Preventable Path: Aboriginal people with mental and cognitive disability in the criminal system', published in October 2015, (**A Predictable and Preventable Path**).⁶¹ This raises the question of how many people on the STMP have mental and cognitive impairment.


Lawyers with Aboriginal and Torres Strait Islander clients who have cognitive impairment, intellectual disabilities or mental illnesses, point out that these clients often have long offending and incarceration histories. Intellectual disability attaches to, or may be the main cause of these clients' offending and consequently lawyers we spoke with had many clients who were put on an STMP or suspected to be on an STMP. The report 'A Predictable and Preventable Path' notes the use of the STMP against Aboriginal and Torres Strait Islander people with mental health disorders and cognitive impairments.⁶²

One lawyer working in regional NSW described a de-facto police policy of targeting Aboriginal and Torres Strait Islander people with cognitive impairments and intellectual disabilities via the strategy of the STMP. This lawyer had asked questions of the police as to why they were targeting these clients and the lawyer was given the impression by police that they believed they were allowed to do so because the individuals were subject to an STMP. The use of the STMP acts to hinder police recognition that Aboriginal and Torres Strait Islander people with cognitive impairments require non-policing solutions and support to address their risk of reoffending.

Our interview data with lawyers affirms an established pattern documented in the scholarship of excessive police contact damaging already structurally poor relationships with Aboriginal and Torres Strait Islander communities. Many Aboriginal and Torres Strait Islander people are fearful or antagonistic about police contact and there is an established trend of unwarranted police encounters generating offences that would not be committed but for that contact.

61 Eileen Baldry, Ruth McCausland, Leanne Dowse & Elizabeth McEntyre, *A Predictable and Preventable Path: Aboriginal people with mental and cognitive disability in the criminal system* (October 2015) www.indigenousjustice.gov.au <https://www.mhdc.unsw.edu.au/sites/www.mhdc.unsw.edu.au/files/u18/pdf/a_predictable_and_preventable_path_2nov15.pdf>.

62 Ibid 115.



This is demonstrated by the case studies of John, Cal and Ryan. Particularly for clients with cognitive impairments, lawyers reported that when police would stop them for no apparent reason, their clients would get very upset and react, with responses resulting from their disabilities. For example, one client sometimes took a swing at an officer, and another client sometimes threw rocks or swore. This would result in them being arrested for offensive language, resist arrest, and assault police.

The case studies below indicate how the profile of youth with disabilities who are understood to be at risk of offending, makes the STMP a counter-productive strategy.

Lance

Lance is a 16-year-old Aboriginal young person who has been diagnosed with a mild intellectual disability and lives in Western Sydney. Lance does not have an extensive criminal record, with two prior charges of break and enter and trespass. Lance started getting in trouble when he was 15, which started a period of intensive stop and searches. His contact with police involved being stopped around three times a day on the street (coinciding with being on bail for his break and enter and trespass charges), easing towards a couple of times a week over the course of a year. Police conducted curfew checks three to four times a week whilst he was on bail between 9pm-3am. On one occasion, police came to Lance's home twice in one night, even though there were no enforcement conditions attached to his bail. His lawyer believes that in part, the police contact was because they believed that Lance is considered by the police to be part of a recidivist family with reference to Lance's dad's criminal history. Lance says he 'can't handle it anymore', and his entire family feels harassed by the police.

Lisa

Lisa is 15 years old, homeless and has severe and complex mental health issues that affect her life daily, including extreme anxiety, post-traumatic stress disorder and borderline personality disorder. Lisa has an Aboriginal father; however, she does not identify as an Aboriginal person. Lisa's condition is untreated and she is subject to crippling episodes that leave her awake for days and very erratic. Lisa is an extremely isolated young person. She has never had any FACS contact and is not receiving sustained positive support or treatment for her health issues.

Lisa has been convicted of multiple offences including larceny and stalk and intimidate. Her criminal history is attributed to her mental health issues; however, her lawyer is concerned that Lisa has never been able to benefit from s32 orders under the *Mental Health (Forensic Provisions) Act 1990* (NSW). Lisa is subject to constant police contact and harassment such that her lawyer suspects she is on an STMP. Lisa's first and early contact with police resulted from her mother and siblings calling the police due to her threatening behaviour when she was in the midst of an episode. Lisa has several siblings who are incarcerated, another that she is estranged from, and absent parents who are interstate and overseas. Lisa has no adults in her life with the only consistent contact being her tenuous relationship with her Juvenile Justice Officer. Lisa's trust issues and lack of emotional regulation due to her mental health issues mean that she is very difficult to work with and many social services will no longer provide assistance.

The following case study of 'Lucas' (who is not Aboriginal or Torres Strait Islander but has Polynesian heritage) further evidences the problems when a young person with mental and cognitive impairments is placed on the STMP.

5 Discussion

Lucas

Lucas is 13 years old and lives with his Mum. Lucas suffers from a range of conditions including ADHD, oppositional defiance disorder, intellectual delay, conduct disorder and autism. This means that Lucas is not able to regulate his emotions and behaviours. Lucas attends school and has been receiving treatment since he was three years old for his complex conditions. His schooling has been interrupted from time to time due to behavioural issues associated with his conditions.

Lucas first came before the Children's Court for larceny, goods in custody and property damage offences in 2017. The Court believed it was more appropriate to divert Lucas under a section 32 order pursuant to the *Mental Health (Forensic Provisions) Act 1990* (NSW). Pursuant to this provision, the charges were dismissed and Lucas' diversion from legal proceedings and rehabilitation was engaged through a treatment plan enforced by the court.


When Lucas was back before the court with a further two charges of larceny and breach AVO (in relation to his mother), the court again imposed another s32 order (adjourned for 6 months) as his treatment plan had not had time to be implemented. This particular order did not have bail conditions attached. A week later Lucas was back before the courts with the offence of damaging property and breach AVO (Lucas had kicked out a window in his Mum's home) and an incorrect charge of breach of bail (Lucas was not on bail at the time). The magistrate accepted that he had told Lucas that he was not subject to bail conditions, although technically through an error the bail conditions had not been removed, and therefore dismissed the breach of bail component. It was clear to His Honour that Lucas' offending was a direct result of his conditions (accepting the expert reports) and a section 32 order was again made, in the same fashion as the second section 32 order (the charges were not then dismissed but would be on completion of the treatment plan after 6 months).

Lucas is still subject to an AVO in relation to his Mum which he breaches consistently with his behavioural outbursts. The AVO includes that he is not to abuse/assault/threaten/damage property. Lucas' mother suffers from anxiety and the AVO and bail conditions are used in desperation as a management tool to try to control Lucas' difficult behaviour. However, Lucas is not considered to be a serious risk of violence to his mother or the community more generally. The breaches of his AVO to date include swearing at his mum and kicking out a window in her bedroom.

Lucas' lawyer first became aware the he was on an STMP as it was detailed in the Police Fact Sheet during Lucas' third and last appearance at the court: "Police, further to this, have viewed [the defendant] as at a high risk of re-offending and he is now currently now under the STMP to allow police to continue monitor to him and his behaviour. But regardless of police and medical intervention [the defendant] has continued his disobedient behaviour."

His lawyer understands that Lucas was likely placed on the STMP after Children's Court proceedings were commenced. Lucas is presently on strict bail conditions and subject to regular bail enforcement checks.

Lucas is a very vulnerable young person who will foreseeably have negative interactions with the police when he is stopped as a result of being on the STMP. His lawyer is concerned that after Lucas' criminal matters have resolved, remaining on the STMP will put him at great risk of further criminal charges. Constant police monitoring may undermine Lucas' treatment and there is a risk it may itself generate conflict with the police and potential further offences as a result.



Lucas' frustration, his difficulty in following orders and his inability to fit in socially and to make friends, are a trigger for his offending. For example, Lucas stole a mobile phone as his friend had lost his phone and Lucas wanted to please him and give him a new phone.

The reasons why Lucas is on an STMP are due to his medical conditions, and as acknowledged by police, for his 'disobedient behaviour'. Given the minor nature of his offending and its relation to his medical conditions, it is inappropriate for a vulnerable young person such as Lucas to be placed on a STMP.

6 Youth offending in NSW and the relevant policy and legal frameworks

6.1 MEASURING THE EFFECTIVENESS OF THE STMP

A number of objectives may be attributed to the STMP by NSW Police, including that the STMP seeks to prevent recidivist offenders from future offending and that the STMP may contribute to a reduction in re-offending rates.⁶³ Underpinning the crime prevention objectives of the STMP program however, is a prior question regarding the mechanism or type of policing that is sought to be deployed by NSW Police in order to achieve these aims.

Our research indicates that STMP policing is premised on a deterrence and incapacitation model. Police aim to intensively surveil and disrupt young people's every day activity to both deter them from engaging in future crime, as well as detecting and prosecuting minor offences. Our preliminary findings indicate this model of policing has great social costs to young people and their families, and to NSW Police, by potentially harming its relationships with the community and compromising its legitimacy. We consider the evidence-based research on policing strategies and youth crime prevention in section 7.

It is not known whether NSW Police collect and analyse STMP outcomes or whether there are particular indicators or measures deployed, nor if any evaluations have been conducted. Whether policing strategies are capable of exerting a causal relation to crime reduction has been controversial in scholarship. There may be substantial difficulties in measuring the effectiveness of the STMP in achieving crime prevention goals. In its 2016 report on NSW Anti-Consorting laws, the NSW Ombudsman notes the following:

The NSW Police Force has a vast range of tools and powers available to it to reduce or prevent crime. In many cases, a number of different strategies will be used simultaneously to tackle particular policing issues or criminal activities. Additionally, the reasons people commit crime or stop offending are complex and varied and often interwoven with personal circumstances that police have no influence over. This makes quantitative measurement of the impact of the use of the consorting law on the prevention of criminal activity within the review period difficult. This difficulty was acknowledged by operational police during our consultations. In response to our issues paper the NSW Police Force submitted:


'Measuring the effectiveness of policing consorting would not be a simple exercise. While it is possible to measure the number of consorting warnings recorded on the Computerised Operational Policing System (COPS) across NSW and break this down by command, this measure does not provide a meaningful assessment of the impact on individuals warned for consorting. The impact of such warnings on persons will vary from individual to individual in that they may choose to adhere to the warning and cease consorting; to ignore the police warning and continue to consort in the same area; or alternatively move to a different area (including a private premise) and continue to consort.'

Accordingly, our discussion of the impact and effectiveness of use of the consorting law is qualitative and anecdotal and based on our extensive police consultation.⁶⁴

This same analysis of the difficulty in establishing the effectiveness of consorting in reducing crime could be applied to the use and measurement of the STMP outcomes. Arguably, measuring the effectiveness of a program to reduce high volume, non-violent crime such as theft is not as simple as counting the number of people charged with an offence as a result of the program. Instead, a reduction in offending by a particular individual, especially if the person is a young person, may be due to a myriad of factors, none of which may relate to the STMP.

63 See, NSW Police Force, Corporate Plan 2016-2018, Service Delivery Priorities.<http://www.police.nsw.gov.au/___data/assets/pdf_file/0017/142640/For_printing_Corporate_Plan_A3_Nov_2016.pdf>.

64 Ombudsman Consorting Law Report, above n 3.



Notwithstanding these concerns, the difference-in-difference estimation method (DID) might typically be used to estimate the effect of the STMP on crime. This method would make use of longitudinal data from those placed on the STMP and control groups (those not on the STMP) to compare the changes in outcomes over time and obtain an appropriate counterfactual to estimate a causal effect.

We suggest that rather than measure effectiveness solely on the statistical basis of whether the STMP reduces reoffending, the STMP should be assessed against the current legislative and policy framework as it relates to children and young people, including against aims such as diversion, reducing the numbers of young people, and Aboriginal and Torres Strait Islander people, involved in the criminal justice system and in custody, and addressing the causes of youth offending. Section 6 briefly outlines a number of key policy objectives across criminal justice that an evaluation of the STMP should be measured against.

Additionally, measuring the effectiveness of the STMP should include consideration of the types of offending young people engage in, and the reasons for doing so. A program that is effective or appropriate for adults may not be effective for young people due to the differences in offending types and patterns by young people as compared to adults and those over the age of 25.

Recommendation:

NSW Police commission BOCSAR to evaluate whether the STMP is reducing youth crime.

6.2 YOUTH OFFENDING IN NSW: AN OVERVIEW

This section provides a brief review of research and broad statistical trends in NSW and Australia on youth offending.

In NSW, young people aged 15 to 19 make up the highest proportion of offenders, making up 25% of all offenders in NSW in 2014-15.⁶⁵ This represents a 3% decrease from the percentage of offenders comprised by young people in 2013-2014.⁶⁶ We note that these figures are derived from police statistics and cannot tell us about offending per se, but rather only about offenders recorded by police and thus a reflection of police practices.

Types of Offences Committed by Young People

Young people are disproportionately responsible for offences such as graffiti, vandalism, shoplifting and fare evasion in NSW but rarely perpetrate very serious offences, such as homicide and sexual offences or white-collar crimes such as fraud.⁶⁷ On the whole, young people are more frequently charged with offences against property than offences against the person.⁶⁸ In 2014-2015, the most prevalent offence among young people recorded by police was theft, with 29% of young offenders in NSW coming into contact with the justice system for that offence.⁶⁹ It is important to note that fare evasion is included in theft statistics and that over 70% of total theft cases in NSW during 2014-2015 were fare evasions.⁷⁰

65 Tom Gotsis, 'A Statistical snapshot of crime and justice in New South Wales' (NSW Parliamentary Research Service, 2014).

66 Australian Bureau of Statistics, *Recorded Crime – Offenders 2014-15: Key Findings* (24 February 2016) Australian Bureau of Statistics <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4519.0>> ('ABS Youth Offenders').

67 Kelly Richards, Australian Institute of Criminology, 'What makes juvenile offenders different from adult offenders?' (No 409, February 2011).

68 Ibid.

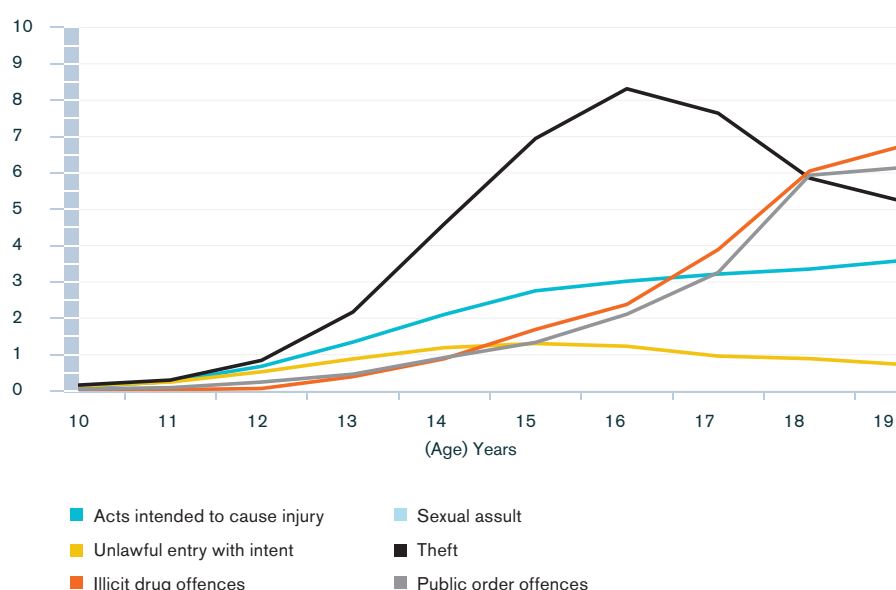
69 *ABS Youth Offenders*, above n 66.

70 Australian Bureau of Statistics, *Recorded Crime – Recorded Crime Offenders 2014-15, NSW* (24 February 2016) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4519.0>>.

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The types of offences most likely to be committed by young people vary depending on age. While theft, including fare evasion, was the most common offence committed by young people aged 10-17 years in 2014 and 2015, the most common offences committed by 18-19 year olds in 2014 and 2015 related to illicit drug use or possession.⁷¹

Youth Offenders, Offender rate (a) by age and selected offence 2014 - 2015⁷²



Young people are more likely to come into contact with police in regard to these types of petty, non-violent offences because they are more compatible with young peoples' developmental characteristics and life circumstances.⁷³ Young people have less experience committing crime than adults, offend in groups, commit offences detectable in public areas such as fare evading on public transport or possessing illicit drugs at festivals or concerts, commit offences close to where they live and offend in an opportunistic manner.⁷⁴ This means that young offenders tend to commit less serious crime but will get caught by police more often than adult offenders precisely because of their age and the types of crimes being committed.

Some offences committed disproportionately by young people, such as motor vehicle theft, have high reporting rates due to insurance requirements.⁷⁵ This may result in young people coming to police attention more frequently. In addition, some behaviours (such as underage drinking) are illegal solely because of the age of the individual. Research has demonstrated that some offence types committed disproportionately by young people (such as motor vehicle thefts and assaults) are the types of offences most likely to be repeated.⁷⁶

⁷¹ ABS *Youth Offenders*, above n 66

⁷² Australian Bureau of Statistics, *Recorded Crime – Offenders, 2014 – 5*, NSW, (24 February 2016) <<http://www.abs.gov.au/ausstats/abs@.nsf/%20Lookup/by%20Subject/4519.0~2014-15~Main%20Features~Youth%20Offenders~4>>.

⁷³ Kelly Richards, 'Juveniles' contact with the criminal justice system in Australia' (Monitoring reports 07, Australian Institute of Criminology, 2009) <<http://www.aic.gov.au/publications/current%20series/mr/1-20/07.aspx>>; Chris Cunneen C and Rob White, *Juvenile justice: Youth and crime in Australia* (South Melbourne: Oxford University Press, 3rd ed, 2006).

⁷⁴ Cunneen, White and Richards, above n 57.

⁷⁵ Ibid.

⁷⁶ Cindy Cottle, Ria J Lee and Kirk Heilbrun 2001, The prediction of criminal recidivism in juveniles: A meta-analysis (2001) 28(3) *Criminal Justice and Behaviour* 367.

It is also important to note that broad legislative or policy changes can disproportionately impact upon juveniles and increase their contact with the police. Farrell's 2009 analysis of police 'move on' powers in Victoria clearly demonstrates, for example, that the introduction of these powers has disproportionately affected particular groups of citizens, including young people.⁷⁷

Trajectories of Offending

Despite the fact that young people make up such a high proportion of all offenders in NSW, police data indicates that young people comprise a minority of all offenders who come into contact with the police.⁷⁸ This is primarily because young people tend to grow out of offending.⁷⁹ There is empirical data indicating that the majority of young offenders are low trajectory⁸⁰ or adolescent limited trajectory⁸¹ offenders. In Victoria, these trajectories have been borne out in a 2016 government crime statistics report which demonstrated that over 80% of young offenders fell into low or adolescent limited offending trajectories and that the majority of adult offenders were comprised of adult onset offenders,⁸² not young onset offenders.⁸³ Recent research across Australia has found similar results.⁸⁴ For example, a 2013 study by Ferrante, a leading researcher in the area of juvenile offending, found that over 80% of all male young offenders and over 90% of all female young offenders in Western Australia born between 1977 and 1995 had a low trajectory of offending over the course of their adolescence.⁸⁵ More importantly, the study found that regardless of factors such as gender and Aboriginal and Torres Strait Islander status, in general offending levels declined during adulthood.⁸⁶

In New South Wales, a 2015 study by Payne and Weatherburn tracked the offending of a subset of the young offenders' population, those first cautioned, conferenced or convicted of an offence in NSW in 1999, across the course of 10 years.⁸⁷ The study found that young offenders whose first contact with the justice system was for a non-violent offence, which comprise the majority of offences committed by young people,⁸⁸ were less likely to reoffend in the following 10 years. The study also found that over 42% of the cohort studied had no further contact with the criminal justice system and just over 17% had only one reconviction in the 10 years following their first contact in 1999. The 30% of the cohort that had 3 or more reconvictions, accounted for over 50% of all reconvictions across the cohort. Payne and Weatherburn particularly note that the risk, speed, and frequency of reoffending was not universal and risk factors such as gender, age of first contact, sentence at first contact and Indigenous status all influenced the likelihood of reconviction.

77 James Farrell, 'All the right moves? Police 'move-on' powers in Victoria' (2009) 34(1) *Alternative Law Journal* 21.

78 Richards, above n 67.

79 Abigail Fagan and John Western, 'Escalation and deceleration of offending behaviours from adolescence to early adulthood' (2005) 38(1) *Australian and New Zealand Journal of Criminology* 59.

80 A low trajectory offender is a young person who has a low level of offending (less than one offence per year) consistently across their adolescence which does not increase when they become adults and usually disappears. See Paul Sutherland and Melanie Millsted, 'Patterns of recorded offending behavior amongst young Victorian offenders' Crime Statistics Agency In Brief No 6 (September 2016). <https://www.crimestatistics.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2016/09/a6/b8c111e6e/20160915_in%20brief6FINAL.pdf >.

81 An adolescent trajectory offender is a young person whose offending spikes, and peaks, during their mid teens then declines to zero or almost zero by the time they turn 18 and does not carry on into adulthood. See Paul Sutherland and Melanie Millsted, above n 80.

82 An adult onset offender is a person who first comes into contact with the criminal justice system over the age of 18, usually between the ages of 18 and 25. See Paul Sutherland and Melanie Millsted, above n 79.

83 Paul Sutherland and Melanie Millsted, above n 80.

84 Michael Livingston, Anna Stewart, Troy Allard and James Ogilvie, 'Understanding juvenile offending trajectories' (2008) 41(3) *Australian and New Zealand Journal of Criminology* 345.

85 Anna M Ferrante, 'Assessing gender and ethnic differences in developmental trajectories of offending' (2013) 46(3) *Australian and New Zealand Journal of Criminology* 379.

86 Ibid.

87 Jason Payne and Don Weatherburn 'Juvenile reoffending: a ten-year retrospective cohort analysis' (2015) 50(4) *Australian Journal of Social Issues* 349.

88 Ibid.

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The results of these studies, indicating that adolescents tend to grow out of offending, are supported by the fact that rates of offending decrease with age. Australian Bureau of Statistics data for 2014-2015 shows that, while there was a sharp increase in the rate of offending between the age groups of 10-14 and 15-19, there was a steady decrease in the number of offences committed in each age group subsequent to the 15-19 age group.⁸⁹

The NSW Ombudsman notes that in 2011, the NSW Department of Attorney General and Justice reported:

Relatively high rates of offending by children and young people are often explained by reference to adolescent brain development. Middle adolescence is a time during which the brain's development trajectory biases a young person to risk taking and sensation seeking behaviours. Young people tend to be impulsive, short sighted and easily influenced by others. It is now widely accepted that these factors, as well as children's vulnerability, immaturity and lack of experience more generally, necessitate a different criminal justice response to offending by children.⁹⁰

Sentence types

In 2011, 61% of all young people up to the age of 17 were diverted from Court by NSW Police.⁹¹ Of the matters finalised by the Courts in 2012 – 2013, only 7,205 of the matters finalised were dealt with in the Children's Court, out of a total of 136,579 matters finalised. In 2012, the rate of incarceration of male juvenile offenders was 63 per 100 000 population.⁹²

In the same year, 61% of the juvenile prison population were of an Aboriginal or Torres Strait background with a rate of 460 per 100 000 Aboriginal or Torres Strait youths sentenced to prison. This makes Aboriginal and Torres Strait Islander young people 32 times more likely to be given a custodial sentence in NSW.

In Payne and Weatherburn's 2015 study of offending by young people over the course of ten years, young persons who were given a custodial sentence for their first contact with the criminal justice system were much more likely to both reoffend and receive a custodial sentence for later offences.⁹³ More than half of the young people who had been given one custodial sentence had two or more separate custodial sentences.⁹⁴

The efficacy of using the STMP against young people in order to prevent their future offending is unsupported by the characteristics of youth offending and the evidence presented in this section.

We detail below the key objectives of existing frameworks pertaining to young people and criminal justice in NSW. In our analysis, the operation of the STMP is inconsistent with these frameworks and not strategically aligned with core criminal justice objectives pertaining to young people.

89 Australian Bureau of Statistics, *Recorded Crime – Offenders 2014-15: Age* (24 February 2016) Australian Bureau of Statistics <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4519.0~2015-16~Main%20Features~Youth%20offenders~4>>..

90 NSW Department of Attorney General and Justice, *Review of the Young Offenders Act 1997 and the Children (Criminal Proceedings) Act 1987: Consultation Paper*, October 2011, p. 5, quoted in *Ombudsman Consorting Law Report*, above n 3.

91 Gotsis, above n 65.

92 Australian Government, *Australian Crime: Facts and Figures: 2013: Chapter 6: Corrections* (7 July 2014) Australian Institute of Criminology <http://www.aic.gov.au/publications/current%20series/facts/1-20/2013/6_corrections.html>.

93 Jason Payne and Don Weatherburn, 'Juvenile reoffending: a ten-year retrospective cohort analysis' (2015) 50(4) *Australian Journal of Social Issues* 349.

94 Ibid.

6.3 YOUNG OFFENDERS ACT 1997

The Young Offenders Act (YOA) was introduced to divert children away from formal court proceedings. It relies on restricted police powers when dealing with children who have committed certain types of offences by issuing them with a warning, caution or referral to a youth justice conference rather than a formal criminal charge.

The YOA introduced a number of general principles including that criminal proceedings should not be used if there are appropriate alternatives; the least restrictive sanctions should be used; rights to legal advice; the participation of parents; and children should be dealt with in their community to support family and community ties.⁹⁵

The YOA has as one of its objects to 'address the over-representation of Aboriginal and Torres Strait Islander children in the criminal justice system through the use of youth justice conferences, cautions and warnings'.⁹⁶

The YOA has been found to increase diversionary options for children and young people by several evaluations.⁹⁷ Issues identified in evaluations include a low referral rate to youth justice conferences compared to the Children's Court and inconsistency in referrals from NSW Police across LACs. A strategic review of the NSW Youth Justice System in 2010 found that the majority of LACs were underutilising youth conferencing: '28 of 77 LACs only referred 1-5 children or young people to youth justice conferences in 2008/09'.⁹⁸ The review concluded that it was highly unlikely that such a small number of children were appropriate for conferencing and suggested that, 'the leadership of individual NSW Police Local Area Commanders plays a large role in determining outcomes for children and young people'.⁹⁹

The use of the STMP in relation to children is at odds with the aims and principles of the YOA. The findings of our research indicate that the STMP, when used on children, is a 'parallel system' to the YOA. The STMP is an inappropriate parallel system because it conflicts with YOA's principles, not least its aim to divert young people from criminal proceedings. In contrast, the objective of the STMP appears to be to proactively increase police contact to communicate to the young person that they are being monitored and are under surveillance. The STMP is also being used to detect and prosecute minor offences. The negative impacts of the STMP on young people in our research indicates it is not in the best interests of young people.

It might be argued that unlike the majority of children that the YOA may deal with, the STMP focuses on recidivist offenders who are responsible for a large number of crimes. However, as noted in a number of the case studies, not every young person apparently on an STMP has actually been found to be guilty of an offence and some have very few minor offences. This raises the possibility that the STMP has a 'net widening' effect. We do not know how low the bar may be for a police officer to nominate a child as a 'person of interest' for an STMP risk assessment.

95 *Young Offenders Act 1997* (NSW), s 7.

96 *Young Offenders Act 1997* (NSW), s 3(d).

97 Peter Murphy, Anthony McGinness, Andrew Balmaks, Tom McDermott and Megan Corriea, 'A strategic review of the New South Wales juvenile justice system' (Report for the Minister for Juvenile Justice, Noetic Solutions Pty Ltd, April 2010), 63.

98 *Ibid* 99.

99 *Ibid* 57.

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6.4 NSW POLICE FORCE YOUTH STRATEGY 2013 - 2017

The NSW Police Youth Strategy 2013 – 2017 (**Youth Strategy**) applies to all interactions between NSW Police employees and young people in NSW. A key objective of the Strategy is to engage in early intervention and prevention initiatives to divert young people from the criminal justice system. The Youth Strategy sets out that NSW Police understand that 'youth issues must be addressed collaboratively, from a whole-of-government approach in order to achieve positive outcomes for youth and the community'.¹⁰⁰ The Youth Strategy Statement, as part of the Youth Strategy, seeks to 'demonstrate transparency and accountability, making clear NSW Police Force's priorities and principles for policing youth'.¹⁰¹ The Youth Strategy sets out that

It is recognised that risk factors associated with offending by youth are often beyond the direct influence of the NSW Police Force. In order to improve strategies which address youth antisocial behaviour, crime and violence, NSW Police Force will continue to collaborate with relevant government and non-government agencies and organisations.¹⁰²

Further the Youth Strategy sets out that:

The NSW Police Force recognises that it cannot respond alone to the diversity of factors which underpin the involvement of youth in crime. Collaboration and cooperation is essential given that the most effective early intervention and crime prevention initiatives involve comprehensive interagency and community partnerships.¹⁰³

The STMP undermines the key objectives of transparency and accountability of the Youth Strategy, as well as promoting positive relations between police and youth. NSW Police need to be confident that the STMP is not undermining its goal to divert young people from the criminal justice system. Further, the narrow goal of achieving crime prevention through targeting young people with police powers does not ensure collaboration and cooperation through interagency and community partnerships, and accordingly is unlikely to address the causes of offending by young people.

6.5 NSW POLICE FORCE ABORIGINAL STRATEGIC DIRECTION 2012 – 2017

The STMP may undermine the capacity for genuine Aboriginal community collaboration through diminished trust of police, and thus undermine explicit NSW Police policy commitments. The NSW Police Force Aboriginal Strategic Direction 2012-17 (**ASD**) is described as 'the overarching document which guides the NSW Police Force in its management of Aboriginal issues'¹⁰⁴. Its key aims include improved communication and understanding between police and Aboriginal people, reducing Aboriginal youth offending and reducing involvement of Aboriginal people in the criminal justice system.

The ASD particularly notes the importance of building trust with Aboriginal communities in the implementation of effective policing. A key area for improvement on the 2007-2011 Aboriginal Strategic Direction was "improved lines of communication and collaboration with the community"¹⁰⁵.

¹⁰⁰ NSW Police Force, 'NSW Police Force Youth Strategy 2013 – 2017' <http://www.police.nsw.gov.au/__data/assets/pdf_file/0007/277054/NSWPF_Youth_Strategy_2013-2017.pdf>, 8.

¹⁰¹ Ibid 10.

¹⁰² Ibid 12.

¹⁰³ Ibid 15.

¹⁰⁴ NSW Police Force, 'Aboriginal Strategic Direction 2012-2017' (Report, NSW Police Force, revised on 30 January 2015) <http://www.police.nsw.gov.au/__data/assets/pdf_file/0004/105178/ASD_2012-2017_Book_Revised_FA_Proof.pdf>.

¹⁰⁵ Ibid.

Aboriginal young people are recognised as being a particularly vulnerable group in the community by the ASD.¹⁰⁶ A key element of the ASD is that LACs are encouraged to actively include Aboriginal young people in consultation initiatives including the formulation of LAC Aboriginal Action Plans, which are designed to address key community concerns. The STMP is likely to damage such efforts by polarising young Aboriginal people who are targeted and fostering negative attitudes towards police.

Diversion is noted as a particularly important tool in regard to Aboriginal youth offending¹⁰⁷ by the ASD. The ASD states that programs for Aboriginal youth at risk and partnerships with social workers (via PCYC) are already being used to promote this diversion and aid vulnerable Aboriginal youth. Unfortunately, the STMP may directly undermine the participation of targeted Aboriginal youth who feel ostracised and distrustful of the police.

6.6 COMMONWEALTH ATTORNEY GENERAL'S DEPARTMENT: NATIONAL YOUTH POLICING MODEL

The Commonwealth Attorney General's National Youth Policing Model (**the Model**) outlines how police should be dealing with and responding to young people. The Model promotes strategic pathways between police and other agencies as a way of supporting young people in addressing the causes of offending behaviours.

The Model identifies intensive 'supervision and support for repeat and high needs offenders' to be one of a number of 'best practice objectives' for meeting its strategy of 'targeted policing - to ensure that policing efforts are appropriately directed to the local areas of greatest need and meet the diverse needs and offending behaviours of young people.'¹⁰⁸ The Model references the United Kingdom's Intensive Supervision and Surveillance Program (**ISSP**), a program that deals with repeat and high offenders. The Model emphasises that ISSP is not only a police program but involves a range of other agencies. The ISSP's objectives include reducing reoffending and the seriousness of reoffending, tackling the underlying problems of the young people and focusing on their educational needs, and supervision and surveillance of the young person.¹⁰⁹

Like the STMP, the ISSP subjects a repeat and high needs offender to targeting and surveillance. However, the surveillance performed is to ensure that the young person completes other components of ISSP with particular emphasis on the educational needs of a young person, and to reassure the community and the judiciary on the success of the education, training and restorative programs of the ISSP. Unlike the STMP, the broader stated focus of the ISSP is with therapeutically addressing the underlying problems that the young person faces with trained community workers.

The Model recommends collaboration and information sharing between police and other sectors in order for the young person to access appropriate support and services. The Model identifies cooperation between justice, education, health and community services sectors as best practices in the interests of the young person. This is in stark contrast to the practice of STMP where there does not appear, as far as we are aware, to be collaboration with other agencies for referral to appropriate services to address the underlying causes of offending. The STMP does not appear to address a young person's developmental level, needs or capacity and presents as a 'one-size fits all' coercive, policing approach.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Australian Government, 'National Youth Policing Model' (Australian Government, 2010), 8. <<https://www.ag.gov.au/CrimeAndCorruption/CrimePrevention/Documents/NationalYouthPolicingModel.pdf>

¹⁰⁹ Emily Gray et al, and the Youth Justice Board for England and Wales 'ISSP: The Final Report' (Report, Youth Justice Board) < https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/354919/yjb-ISSP-summary.pdf >.

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6.7 THE CONVENTION ON THE RIGHTS OF THE CHILD

The Convention on the Rights of the Child (**CROC**) requires that authorities such as the police consider the best interest of the child as the primary consideration.¹¹⁰ The STMP appears to contravene this principle, as the focus is solely on a narrow approach to crime prevention largely based on deterrence without consideration of the best interests of the young person.

Furthermore, the CROC states that a child shall not 'be subjected to arbitrary or unlawful interference with his or her privacy, family or correspondence'.¹¹¹ Our research indicates specific instances where the STMP has contravened this principle, including unlawful stop and search. More broadly, NSW Police need to be confident that the STMP is not arbitrarily interfering with children and their families as a systemic effect of the policy. When police put a child on an STMP without consulting with the child, their parents or guardians, and undertake proactive policing strategies to prevent potential *future* criminal activity, these strategies risk arbitrary interference. A child or young person is often not given any reason for their placement on an STMP, and often the targeting is disproportionate to the child or young person's level or type of previous offending. It may be argued by NSW Police that the risk categories used in the policy provide an 'objective' basis for identification and management of children and young people on the STMP. However, these risk factors remain secret and are unjustifiably preventing the STMP from being evaluated and made accountable.

Recommendation:

NSW Police discontinue applying the STMP to children under 18. Children suspected of being at medium or high risk of reoffending should be considered for evidence-based prevention programs that address the causes of reoffending (such as through Youth on Track, Police Citizens Youth Clubs NSW (PCYC) or locally based programs developed in accordance with Just Reinvest NSW), rather than placement on an STMP.

6.8 ALTERNATIVE PROGRAMS IN NSW RELEVANT TO YOUNG PEOPLE IN THE CRIMINAL JUSTICE SYSTEM

The targeting of young people subject to an STMP does not address the underlying factors leading to crime. Funding alternative and early intervention measures to address not only the criminal behaviour of young people, but also the causes of the vulnerable young persons' criminal behaviour may be a better use of resources.

Youth on Track

Early indications are that Youth on Track¹¹² funded by the NSW government, may be beneficial. Youth on Track is an early intervention program that works with young people aged 10 – 17 years who are considered to have a medium to high risk of becoming entrenched in the juvenile justice system.¹¹³ The program works with young offenders and young persons at risk of offending and their families to reduce their criminal behaviour and involvement in the criminal justice system. The key principles of the Youth on Track model include intervening earlier to divert young people from the criminal justice system, one-on-one case management to manage and support juvenile offenders and those at risk of offending, separating treatment from punishment,

¹¹⁰ *Convention of the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), Art 13.

¹¹¹ *Ibid* Art 16.

¹¹² NSW Government, Youth on Track (20 July 2017) www.youthontrack.justice.nsw.gov.au <<http://www.youthontrack.justice.nsw.gov.au/youth-on-track/>>.

¹¹³ *Ibid*.

responding to risk and need rather than simply to crime and responding promptly to enable a response to an immediate problem.¹¹⁴ From July 2013 the program operated in Blacktown, the Hunter and Mid North Coast regions. From December 2016, the program expanded to Central West, Coffs Harbour and New England regions. A snapshot evaluation of participation to date notes that of the young people with an initial high risk who completed the Youth on Track program, 85% improved their behaviour, 83% improved their education engagement and family circumstances and 67% improved their attitudes and peer relations.¹¹⁵

In April 2017, an evaluation report of Youth on Track was published by the Cultural and Indigenous Research Centre Australia.¹¹⁶ The evaluation report focussed on social outcomes, and included qualitative and quantitative data, and will sit alongside a broader evaluation report that will evaluate the impact of the program on re-offending, to be finalised in 2018. The outcomes of the report will inform the decision to roll out the program state wide. The report notes that:

... Youth on Track is contributing to enhanced social outcomes for many clients. The success of the scheme appears to relate to the application of strong evidence of 'what works' in interventions to address the individual criminogenic risk factors of the young person.

It was recognised that the structure of the scheme contributed to positive attitudinal and behavioural shifts for some clients. Stakeholders, clients and staff reported positive outcomes as a result of the provision of one-on-one case management and the concomitant coordination of service delivery, facilitation of access to supports and the delivery of interventions that address the individual young person's criminogenic needs and that aim to increase pro-social behaviour. Behavioural, family and educational interventions were all noted as especially beneficial for the client and, where applicable, their family.

...

While improvements were observed, challenges in obtaining referrals (particularly from schools) and issues with initial engagement were identified. Future studies could consider why some young people decline to participate and others engage in the scheme.

In its submission to the statutory review of the anti-consorting laws, the NSW Police Force noted that:

In the Consorting SOPs, police officers are advised to consider dealing with young people aged 16 and 17 years who may be charged with consorting under section 93X of the Crimes Act via the diversionary scheme put in place by the Young Offenders Act 1997. In this case, the young people aged 16 and 17 years are more likely to benefit from State Government initiatives such as Youth on Track, an early intervention scheme for young people that provides integrated case management services responding to offending behaviour.¹¹⁷

114 CIRCA, 'Youth on track social outcomes evaluation' (Report prepared for the NSW Department of Justice, April 2017) <<http://www.youthontrack.justice.nsw.gov.au/Documents/Youth%20on%20Track%20Social%20Outcomes%20Evaluation%20-%20Final%20Report%2019%20April%202017.pdf>>.

115 Ibid.

116 Ibid.

117 *Ombudsman Consorting Law Report*, above n 3, 72.

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PCYC

Police Citizens Youth Clubs NSW (**PCYC**)¹¹⁸ are partnerships between NSW Police and local communities, located across NSW and established as a way to deter young people from offending. The PCYC works in partnership with the Youth Command of NSW Police and supports the work of the youth case managers in their work with young people with a history of offending and those considered at risk of offending.¹¹⁹ In 2016, police worked with 1575 young people with a history of offending and those considered at risk of offending through PCYC.¹²⁰

Youth Koori Court

The Youth Koori Court is a dedicated Court for Aboriginal young people. Conducted in a relatively informal setting, the Youth Koori Court increases Aboriginal involvement in the delivery of justice, ensuring outcomes are culturally relevant and have more impact on the offender.¹²¹ Caseworkers improve the way the Court connects with young Aboriginal people and address the underlying causes of criminal behaviour.¹²² An Elder also sits with the judicial officer to provide cultural advice to ensure the court process is culturally relevant for the young person.¹²³ More than 60 young Aboriginal people have taken part in the Youth Koori Court since 2015, when it began operating one day a week at Parramatta Children's Court.¹²⁴ The Youth Koori Court aims to reduce the risk factors that impact on re-offending behaviour and ultimately reduces the number of young Aboriginal people being sentenced to a period of detention.¹²⁵

Our findings indicate that the use of the STMP in relation to young people involved in programs such as the Youth Koori Court would appear to have a conflicting impact on the young people. Alternate approaches to the STMP for young people warrant investigation.

Just Reinvest NSW

Just Reinvest NSW¹²⁶ works to promote justice reinvestment as a way to work with an offending young person and their communities to address criminal behaviour, by addressing underlying criminogenic factors 'such as homelessness, child protection, disability, high-risk drug and alcohol use, violence, poverty and a lack of appropriate services'.¹²⁷

Just Reinvest NSW is an independent, not for profit incorporated association formed to encourage use of the policy of justice reinvestment in NSW. Since 2013, Just Reinvest NSW has been working in partnership with Maranguka, a community hub, to develop a justice reinvestment framework for Bourke. The justice reinvestment strategy in Bourke has identified a number of 'circuit breakers' to implement a long-term vision of reducing reoffending and creating a safer community.

118 Police Citizens Youth Clubs NSW, <<https://www.pycnsw.org.au>> Accessed 27 July 2017.

119 Police Citizens Youth Clubs NSW, Annual report 2016, 1. <https://www.pycnsw.org.au/media/FINAL_PCYC_Annual_Report_2016_email.pdf> Accessed 28 August 2017.

120 Ibid 9.

121 NSW Government, '\$220,000 funding boost for Youth Koori Court' (16 June 2017) <[http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/\\$220000-funding-boost-for-Youth-Koori-Court.aspx](http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/$220000-funding-boost-for-Youth-Koori-Court.aspx)> Accessed 28 August 2017.

122 Ibid.


123 NSW Government, 'NSW trials youth Koori Court' (14 November 2014) www.justice.nsw.gov.au <<http://www.justice.nsw.gov.au/Pages/media-news/news/2014/NSW-Trials-Youth-Koori-Court.aspx>>.

124 NSW Government, '\$220,000 funding boost for Youth Koori Court', above n 116.

125 NSW Government, 'NSW trials youth Koori Court', above n 118.

126 Just Reinvest NSW, <<http://www.justreinvest.org.au/>>.

127 Just Reinvest NSW, 'Our Work: It's time to think differently about criminal justice in NSW', <<http://www.justreinvest.org.au/our-work/>>.



These include bail protocols to reduce the numbers of young people, in particular, spending long periods on remand, a warrant clinic to avoid individuals going 'underground', which results in them ceasing to access services, and a driver licensing program.¹²⁸

A recent initiative developed by the Maranguka community hub with police in Bourke, provides a holistic and community driven alternative to the STMP:

In August 2017, the Bourke Local Area Command and the Maranguka community hub instigated daily morning meetings to provide updates and share data, with a view to providing support to those in need, with a particular focus on children at risk of offending and their family members.¹²⁹

As Just Reinvest NSW put it, 'Police should be encouraged to think laterally and move beyond traditional policing methods. Police should be supported to enter into genuine and meaningful collaborations with communities'.¹³⁰

These restorative and community based approaches to youth offending are beginning to be evaluated with early signs of success.

¹²⁸ Just Reinvest NSW, 'Justice reinvestment in Bourke', <<http://www.justreinvest.org.au/justice-reinvestment-in-bourke/>>.

¹²⁹ Just Reinvest NSW, 'Submission to the Australian Law Reform Commission Inquiry into the Incarceration Rates of Aboriginal and Torres Strait Islander Peoples' (12 September 2017) 12.

¹³⁰ Ibid.

7 The STMP: an ineffective crime prevention tool for young people

7.1 RISK FACTORS FOR INVOLVEMENT OF YOUNG PEOPLE IN THE CRIMINAL JUSTICE SYSTEM

Police surveillance plays a fundamental role in producing the number and nature of offences brought into the criminal justice system, particularly the juvenile justice system, as well as determining the young people who are considered offenders.¹³¹ While it has been demonstrated that socio-economic disadvantage and poverty have a correlation with offending rates by young people, it is simplistic to argue that disadvantage leads to higher offending rates.

There are certain risk factors, however, that may be associated with involvement in the criminal justice system. These include age, gender, ethnicity, whether a young person is Aboriginal or Torres Strait Islander, social class, family, substance use, mental health and cognitive disability, sexuality, homelessness and unstable accommodation and child protection and out of home care histories.¹³²

These social characteristics do not cause offending, but bring young people with these clusters of disadvantage to police attention far more often than their peers without these compounding problems. The responses of State institutions to these compounding problems inform the way in which young people with these characteristics are treated by criminal justice agencies.

These factors may also influence whether an individual is subject to diversionary measures or more punitive measures. The earlier that a child has an interaction with the criminal justice system, the more likely they are to be involved with that system in the future, leading to more serious penalties.¹³³

According to the 2011 census, only 2.9% of the NSW population are Aboriginal or Torres Strait Islander.¹³⁴ As at December 2015, however, almost half of the population in NSW Juvenile Justice facilities was Aboriginal or Torres Strait Islander.¹³⁵

One recommendation to reduce the over representation of Aboriginal and Torres Strait Islander young people in custody is diversion, at all stages of the criminal justice system, and in particular prior to arrest.¹³⁶ The Australian Human Rights Commission has noted that diversion is a key part of best practice principles for juvenile offenders:

Diversionary options aim to avoid the stigma associated with prosecution and the danger of trapping young people in a pattern of offending behaviour. They seek to temper the punitive nature of criminal justice processes in recognition of the particular vulnerabilities of juvenile offenders. They also recognise that most juvenile offending is episodic and transitory - most young people mature out of criminal behavior.

...

Diversionary options may create better opportunities to identify any family, behavioural and health problems contributing to the offending behavior ... They may also save resources for law enforcement and criminal justice agencies.¹³⁷

¹³¹ Cunneen, White and Richards above n 57, 153.

¹³² Ibid 64.


¹³³ Sumitra Vignaendra and Jacqueline Fitzgerald, NSW Bureau of Crime Statistics and Research Bulletin, *Reoffending Among Young People Cautioned by Police or Who Participated in a Youth Justice Conference*, Number 103 (October 2006).

¹³⁴ Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander Australians*, June 2011 (30 August 2013) www.abs.gov.au <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/3238.0.55.001>>.

¹³⁵ New South Wales Bureau of Crime Statistics and Research, 'New South Wales Custody Statistics Quarterly Update December 2015' (Report, 2015).

¹³⁶ Laura Brown and Ken Zulumovski, Public Interest Advocacy Centre Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the High Level of Indigenous Juveniles and Young Adults in the Criminal Justice System*, 22 December 2009, 3.

¹³⁷ Australian Human Rights Commission, *Best Practice Principles for the Diversion of Juvenile Offenders*, Human Rights Brief No 5 (September 2001) <<https://www.humanrights.gov.au/publications/human-rights-brief-no5-best-practice-principles-diversion-jvenile-offenders-2001>>.



Studies show, however, that Aboriginal and Torres Strait Islander young people are less likely than non-Aboriginal and Torres Strait Islander youth to have access to diversionary options such as conferencing, to divert juveniles from custody.¹³⁸ Similarly, Aboriginal and Torres Strait Islander young people may not receive the benefit of police cautioning at the same rate as the general youth population.¹³⁹

It is clear from the case studies in sections 4 and 5 and from the statistics in section 2, that Aboriginal and Torres Strait Islander young people are over represented as STMP targets. An initial interaction with police may elevate the risk of arrest and detention in custody.

The approach to policing directed under the STMP may draw young Aboriginal and Torres Strait Islander people into the criminal justice system when it is unnecessary, leading to largely irreversible and adverse consequences for the individual and his or family.¹⁴⁰ Studies have shown that custodial penalties for juveniles at best have no specific deterrent effect and at worse increase the likelihood of further involvement in the criminal justice system.¹⁴¹ A criminal record and/or time spent in custody from a young age also has a detrimental effect on other aspects of life such as education, stability of employment and family relationships.¹⁴²

7.2 BEST PRACTICE IN YOUTH CRIME PREVENTION

Early Intervention

Crime prevention strategies in relation to young people are highly politicised and contested. Best practice indicates the underlying structural factors leading to crime should be addressed through evidence based early intervention strategies.

There is ample evidence in support of strategies that address the correlates of juvenile offending.¹⁴³ Some strategies seek to address risk factors such as family dysfunction, a delinquent peer group, truancy or alcohol abuse, as well as strengthening 'protective factors' such as positive family relationships, having a positive role model or part-time employment.¹⁴⁴ Prevention programs may also be cost-effective in terms of their ability to generate long-term savings to taxpayers – mainly as a result of reducing the future demand on the juvenile and adult justice systems, including the demand for construction of youth detention centers and adult prisons.¹⁴⁵

Early intervention programs with support for disadvantaged households have been found to be among the most effective of prevention programs in terms of their ability to reduce the number of juvenile crime outcomes and deliver substantial long-term savings to taxpayers¹⁴⁶. The most successful programs are those that emphasise family interactions, probably because they focus on providing skills to the adults who are in the best position to supervise and train the child.¹⁴⁷

138 Human Rights and Equal Opportunity Commission ('HREOC'), 'Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families' (Report, HREOC, 1997), Ch 24 and 26, 521 – 527; HREOC, 'Aboriginal and Torres Strait Islander Social Justice Commissioner (Fourth Report, 1996) Ch 2; Lucy Snowball, Australian Government, 'Diversion of Indigenous Juvenile offenders' (2008) No 355 *Trends and Issues in Crime and Criminal Justice*, 3.

139 Ibid.

140 Sophie Farthing, Public Interest Advocacy Centre, Submission to the Finance and Public Administration Committee, *Inquiry into Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services*, 30 April 2015.

141 Don Weatherburn, Sumitra Vignaendra and Andrew McGrath, 'The Specific Deterrent Effect of Custodial Penalties on Juvenile Reoffending' (Technical and Background Paper 33, Criminal Research Council, 2009) 10.

142 Brown and Zulumovski, above, n 131, 3.

143 Murphy et al, above n 96. The Washington State Institute for Public Policy, based in Washington in the U.S., identifies 'evidence based' policies that can 'lead to better state-wide outcomes coupled with a more efficient use of taxpayer dollars': < <http://www.wsipp.wa.gov/BenefitCost>>.

144 Eileen Baldry, Julian Trofimovs, Jude Brown, Nicola Brackertz and Michael Fotheringham, *Springboard Evaluation Report* (Evaluation Report, University of NSW and Australian Housing and Urban Research Institute, 2015).

145 Ibid.

146 Ibid.

147 PW Greenwood, 'Cost Effective Violence Prevention through Targeted Family Interventions' (2004) *Annals of the New York Academy of Sciences*, 1036(1) 201.

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Targeted, proactive policing

Coercive policing approaches have a minimal impact on crime reduction, and in some cases have been found to exacerbate or create social problems.¹⁴⁸ There is no convincing evidence that targeted or proactive policing reduces the long-term costs associated with ongoing criminal justice system contact, or is appropriate for addressing the needs of children and young people. In fact, in some circumstances targeted policing is shown to increase long term financial and social costs.¹⁴⁹

In the United States, police 'focused deterrence' programs (known as the 'pulling levers' approach), which can be said to have some similarities with the STMP, have been evaluated and found to reduce crime.¹⁵⁰ The pulling levers strategy can however be distinguished from the STMP as it targets young people in two ways – it specifically targets gun crime and youth homicide, whereas the STMP targets many different types of crime, and often minor crime; and, it utilises a multi-agency approach whereas the STMP only involves, as far as we are aware, NSW Police.

In 2012 Braga and Weisburd conducted a meta analyses evaluation of ten pulling levers strategies targeting gangs and criminally active groups reported large, statistically significant reductions in violent crime. These results included a 63 percent reduction in youth homicides in Boston, a 44 percent reduction in gun assault incidents in Lowell, Massachusetts, a 42 percent reduction in gun homicides in Stockton, California, a 35 percent reduction in homicides of criminally active group members in Cincinnati, a 34 percent reduction in total homicides in Indianapolis, and noteworthy short-term reductions in violent crime in Los Angeles.¹⁵¹ The authors note that the evaluation evidence needs to be strengthened and that the theoretical underpinnings of the strategy requires refinement. We explain shortly why 'pulling levers' is not an appropriate model for youth crime prevention in NSW.

Braga and Weisburd describe the object of the strategy: 'Pulling levers strategies attempt to influence the criminal behaviour of individuals through the strategic application of enforcement and social service resources to facilitate desirable behaviours'.¹⁵² The 'levers' used across this type of strategy are broadly two fold. First, the framework is an inter-agency model, deploying police, probation, parole, neighbourhood groups, school police, gang outreach workers, clergy, drug enforcement administration and immigration to deploy a repeated, specific deterrence message to a relatively small target audience.¹⁵³ The second broad form of 'lever' represents all available legal tools available to police to sanction individuals and groups identified to be 'high risk'. For example in Operation Ceasefire in Boston, police strategies targeting gang violence are described below:

The authorities could disrupt street drug activity, focus police attention on low-level street crimes such as trespassing and public drinking, serve outstanding warrants, cultivate confidential informants for medium and long term investigations of gang activities, deliver strict probation and parole enforcement, seize drug proceeds and other assets, ensure stiffer plea bargains and sterner prosecutorial attention, request stronger bail terms (and enforce them) and bring potentially severe federal investigative and prosecutorial attention to gang related drug and gun activity. Simultaneously, youth workers, probation and parole officers and later churches and other community groups offered gang members and other kinds of help.¹⁵⁴

148 Cunneen, White and Richards, above n 57, 314.

149 Eileen Baldry, Leanne Dowse, Ruth McCausland and Melissa Clarence, 'Lifecourse institutional costs of homelessness for vulnerable groups' (Final Report, Australian Government, 15 May 2012); Ruth McCausland, Eileen Baldry, Sarah Johnson and Anna Cohen, 'People with mental health disorders and cognitive impairment in the criminal justice system: Cost-benefit analysis of early support and diversion' (Report for Australian Human Rights Commission, UNSW and PricewaterhouseCoopers, August 2013), 1-12.

150 David Kennedy, 'Pulling Levers: Getting Deterrence Right' (1998), 236 National Institute of Justice Journal 2; Anthony A Braga and David L Weisburd, 'Pulling Levers Focused Deterrence Strategies to prevent Crime' (Crime Prevention Research Review No. 6, U.S. Department of Justice, Office of Community Oriented Policing Services, 2012).

151 Braga and Weisburd, above n 145, 14.

152 Ibid 7.

153 Kennedy, above n 145, 4.

154 Braga and Weisburd, above n 145, 69.

'Pulling levers' is in effect a zero-tolerance policing strategy, widely critiqued as an inappropriate policing approach that undermines procedural fairness, substantive justice and damages police legitimacy.¹⁵⁵ Aggressive, order maintenance policing is certainly not desirable for meeting the goals of the State in reducing youth crime, and every positive trend in youth justice has been to move away from this approach. Furthermore, 'focused deterrence' is not an appropriate philosophy for policing young people in NSW and is inconsistent with the framework of youth justice outlined in section 6. Deterrence is premised on the 'certainty, swiftness and severity of punishment associated with certain acts'¹⁵⁶. By increasing the risks associated with offending, the theory is that the offender, when considering that the costs of committing the crime will outweigh the benefits, will be deterred by heavy handed, zero tolerance police action. Such an approach sits contrary to best practice approaches to diverting young people from the criminal justice system. Deterrence also runs against the grain of more holistic, cutting edge approaches to social prevention such as relational developmental systems theories that reject single factor 'causes' and prioritise the relations, connections or transactions between individuals and contexts as means to facilitate complex human change processes.¹⁵⁷

In NSW, the effectiveness of proactive policing needs to be grounded in clearly defined objectives. For example, the legitimacy of proactive policing strategies amongst targeted communities and their objective fairness, accountability and transparency ought to be reflected in measuring the effectiveness of efforts to use any police strategies as crime prevention. Because targeted policing requires a high police presence in certain communities on a consistent basis, this presence tends to be intimidating and exacerbates existing tensions between members of the communities targeted and between members of the community and the police.¹⁵⁸ A particular example of the lack of success of targeted policing can be seen in the employment of zero tolerance policing in areas of NSW such as Bankstown in the 1990s where ethnic minorities felt unjustly discriminated against, particularly those who came from low socio-economic backgrounds.¹⁵⁹ These approaches have compromised relations between the police and those communities.¹⁶⁰

Research has consistently highlighted the problematic nature of relations between police and young people. Interactions between police and young people are often characterised by conflict and tension, with high levels of anger, fear and mistrust on both sides.¹⁶¹ From the perspective of young people, there are perceptions of both over-policing in public spaces and under-policing in cases of victimisation. Perceptions of racism, intimidation and violence have also been identified.

¹⁵⁵ See for example, David Dixon 'Broken windows, zero tolerance and the New York miracle' *Current Issues in Criminal Justice* (1998) 10: 96; David Dixon and Lisa Maher, 'Policing, crime, and public health: lessons for Australia from the 'New York miracle' *Criminal Justice: The International Journal of Policy & Practice*, (2005) 5: 115.

¹⁵⁶ Braga and Weisburd, above n 145, 7.

¹⁵⁷ Alan France, Kate Freiberg and Ross Homel, 'Beyond Risk Factors: Towards a Holistic Prevention Program for Children and Young People', *British Journal of Social Work* (2010) 1.

¹⁵⁸ Peter Grabosky, 'Community Policy, East and West, North and South' in Peter Grabosky (ed) *Community Policing and Peacekeeping* (Taylor and Francis Group, 2009), 1-11.

¹⁵⁹ Rob White, 'Ethnic Diversity and Differential Policing in Australia: The Good, the Bad and the Ugly' (2009) 10(4) *Journal of International Migration & Integration*, 359.

¹⁶⁰ Ibid.

¹⁶¹ Daryl S Borgquist, Timothy J Johnson and Martin A Walsh, 'Police and urban youth relations: an antidote to racial violence: A guide for police, youth and community leaders to improve police/urban relations' (Report, United States Department of Justice, Community Relations Service, 1995); John Liederbach, 'Controlling suburban and small-town hoods: an examination of police encounters with juveniles' (2007) 5(2) *Youth Violence and Juvenile Justice* 107; Rob White, 'Police practices, punishment and juvenile crime prevention', in Allan Borowski and Ian O'Connor (eds), *Juvenile crime, justice and corrections* (Addison Wesley Longman, 1997).

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While many factors bring young people and police together, empirical research conducted throughout the 1990s suggests that many young people consider that much of the police contact and intervention in relation to young people is unnecessary.¹⁶² Negative perceptions of young people towards the police have been linked to the frequency of contact between these two groups.

Community-based programs that focus on the individual offender rather than on the family and underlying systemic causes are much less successful. Intensive supervision, surveillance, extra services, and early release programs, for example, have not been found effective.¹⁶³ These programs tend to have a similar effect to targeted policing as they reduce trust and increase stigmatisation on a smaller scale.¹⁶⁴ They do nothing to change the young person's social conditions or context or their future prospects. Further, like targeted policing, these programs focus on the young offender as a rational decision maker motivated by profit and loss rather than focusing on the circumstances that have caused the young person to offend.¹⁶⁵

As discussed in sections 4–5 the STMP can damage children's and young people's relations with their family. The STMP fails to tackle any of the underlying factors which most often increase a young person's contact with the criminal justice system. The more a young person, especially those with disability, are managed by the criminal justice system the more enmeshed they become in it.¹⁶⁶ Further, the STMP applies a stigmatising effect which should not be underestimated in increasing the likelihood, again, of further contact with the criminal justice system.

Additionally, coercive approaches can stigmatise and criminalise young people who may otherwise have had little or no involvement in the formal criminal justice system and can create friction in youth-police relations.¹⁶⁷ Poor relationships with police have implications for young people and may negatively affect how police use discretion in their relations with young people¹⁶⁸. Frequent police contact also has the negative additional effect of 'labelling' the youth as an offender and entrenching the stigmatising effect.

According to the NSW Ombudsman, feedback from one NSW Police Force Commander in an inner-city location in relation to the anti-consorting laws was that:

His officers were already stretched with significant drug operations almost daily, as a trial site for joint work with NSW Housing to tackle drug supply in public housing and as a leader in diversionary programs in relation to at risk children and young people. He advised he could not see the value in the use of the consorting law in particular as 'bringing Aboriginal kids in front of the court means they just keep coming in front of the court'. Issuing consorting warnings to these young people would also limit their ability to engage in the diversionary programs for youth supported by the LAC and the local community.¹⁶⁹

Targeting under the STMP may result in bringing a young person before the Court unnecessarily. Targeting under the STMP may also limit a young person's willingness to participate in and limit the effectiveness of any diversionary programs. These and other outcomes should be subject to careful consideration in evaluation of the STMP.

162 Chris Alder, Ian O'Connor, Kate Warner and Rob White, 'Perceptions of the treatment of juveniles in the legal system' (Report, National Youth Affairs Research Scheme, 1992); Greg Noble, Scott Poynting and Paul Tabar, *Kebabs, kids, cops and crime: youth, ethnicity and crime* (Pluto Press, 2000); Youth Justice Coalition of NSW, Western Sydney Juvenile Justice Interest Group, Youth Action and Policy Association NSW, *Nobody listens: the experience of contact between young people and police* (Youth Justice Coalition of NSW, 1994).

163 Steve Aos, Roxanne Lieb, Jim Mayfield, Marna Miller and Annie Pennucci, 'Benefits and costs of prevention and early intervention programs for youth' (Report No. 04-07-3901, Washington State Institute for Public Policy, 17 September 2004).

164 White, above n 154.

165 Ibid.

166 Eileen Baldry and Leanne Dowse, 'Compounding mental and cognitive disability and disadvantage: police as care managers' in Duncan Chappell (ed) *Policing and the Mentally Ill: International Perspectives* (CRC Press, 2013) 219.

167 Cunneen, White and Richards, above n 57, 314.

168 Anna Stewart and Frances Smith, 'Youth justice conferencing and police referrals: the gate-keeping role of police in Queensland, Australia' (2004) 32(4) *Journal of Criminal Justice* 345.

169 *Ombudsman Consorting Law Report*, above n 3, 58.

There are indications that programs which help minimise unnecessary coercive contact between police and young people may better support crime prevention.¹⁷⁰ Perhaps more importantly, programs such as the STMP which are designed to increase police contact with youth are likely to negatively affect youth perceptions of and relationships with police. In some instances, disadvantaged children with 'challenging behaviour' born out of mental and cognitive disability, or other indicators of social disadvantage, are left to the police to manage, when they should be being supported by social service agencies.¹⁷¹ This results in negative police relations as police treat them as risky offenders rather than as children and young people at risk.

Recommendation:

The Law Enforcement Conduct Commission (LECC) conduct a comprehensive review of the STMP to investigate whether its implementation may result in agency maladministration.¹⁷² The terms of reference of the recommended LECC review should include consideration of whether the STMP:

- i. is effective and appropriate in dealing with the risk of offending in young people under 25 and children;
- ii. is effective and appropriate in dealing with the risk of offending in adults;
- iii. is effective and appropriate in relation to other vulnerable people (as defined in clause 28 of the Law Enforcement (Powers and Responsibilities) Regulation 2016), including those with impaired intellectual or physical functioning, Aboriginal and Torres Strait Islander peoples and persons from non-English speaking backgrounds;
- iv. is consistent with NSW policy and practice for juvenile justice including principles of diversion from the criminal justice system as well as NSW law, including the Young Offenders Act 1997 (NSW), and the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW); and
- v. is consistent with NSW Police policies and practices for policing young people, including the NSW Police Force Youth Strategy, Aboriginal Strategic Direction and Aboriginal Action Plans, the NSW Domestic Violence Strategy, the NSW Police Disability Inclusion Action Plan and all other policies and procedures regarding vulnerable persons.

In the course of the review, the LECC should consult with other professional disciplines such as mental health practitioners, Family and Community Services Managers, the Department of Justice, and community workers about best practice in diversion, crime prevention and the needs of young people.

170 Shuling Chen, Tania Matruglio, Don Weatherburn, Jiuzhao Hua, NSW Bureau of Crime Statistics Research, *The transition from juvenile to adult criminal careers* (Crime and Justice Bulletin, Number 86, 2005); Jiuzhao Hua, Joanne Baker and Suzanne Poynton, NSW Bureau of Crime Statistics Research, *Generation Y and crime: a longitudinal study of contact with the NSW criminal courts before the age of 21* (Crime and Justice Bulletin, Number 96, 2006); Mark Lynch, Julianne Buckman, and Leigh Krenseke, 'Youth justice: criminal trajectories' (Trends and Issues No 265, Australian Institute of Criminology, September 2003); Grace Skrzypiec and Joy Wundersitz, Government of South Australia, 'Young people born 1984: extent of involvement with the juvenile justice system' (Research Findings, Office of Crime Statistics and Research, April 2005); Don Weatherburn, Rachel Cush and Paula Saunders, NSW Bureau of Crime Statistics Research, *Screening juvenile offenders for further assessment and intervention* (Crime and Justice Bulletin, Number 109, 2007).

171 McCausland, Baldry, Johnson and Cohen, above n 144.

172 *Law Enforcement Conduct Commission Act 2016* (NSW), s 11.

The background features a collage of images. The top right shows a person in a teal shirt with a white wave pattern. The bottom right shows a person in a plaid shirt sitting on the floor. The page is divided into large geometric sections of teal, yellow, and orange.

Appendix

1 Local Area Commands

Redfern

Redfern is an inner city metropolitan LAC and covers the suburbs of Alexandria, Beaconsfield, Chippendale, Darlington, Erskineville, Eveleigh, Redfern, Rosebery, Waterloo and Zetland.

Parramatta

Parramatta is a metropolitan LAC and covers the suburbs of Constitution Hill, North Parramatta, Northmead, Old Toongabbie, Parramatta, Toongabbie, Wentworthville, Westmead and Winston Hills.

Orana

Orana is a regional LAC in the West of NSW, and covers the suburbs and towns of Apsley, Armatree, Arthurville, Bakers Swamp, Baldry, Balladoran, Ballimore, Barbigal, Bearbong, Beni, Biddon, Bodangora, Boothenna, Bournewood, Breelong, Brocklehurst, Bruah, Bundemar, Bunglegumbie, Burrabadine, Burroway, Butlers Falls, Collie, Comobella, Coolbaggie, Cumboogle, Cundumbul, Curban, Curra Creek, Dandaloo, Delroy Heights, Driestone, Dubbo, Elong Elong, Eschol, Euchareena, Eulomogo, Eumungerie, Eurimbla, Farnham, Geurie, Gilgandra, Gin Gin, Glengerra, Gollan, Goonoo Forest, Hargraves, Jones Creek, Kerrs Creek, Kickabil, Lake Burrendong, Little River, Loombah, Maryvale, Medway, Mendooran, Merrigal, Minore, Minore Falls, Mogriguy, Montefiores, Mookerawa, Mount Aquila, Mount Arthur, Mountain Creek, Mugga Downs, Mumbil, Muronbung, Murrumbidgee, Nanima, Narromine, Narromine East, Neurea, North Yeoval, Nubingerie, Obley, Ponto, Rawsonville, Spicers Creek, Stuart Town, Suntop, Terrabella, Terramungamine, Tomingley, Tonderburine, Toongi, Tooraweenah, Trangie, Twelve Mile, Upper Obley, Walmer, Wambangalang, Wellington, Westella, Whylandra, Wongarbon, Wuuluman, Yarrabar, Yarrabin, Yarragal, Yeoval and Yullundry.

Canobolas

Canobolas is a regional LAC in the West of NSW and covers the suburbs and towns of Amaroo, Baldry, Belgravia, Billimari, Bocobra, Boomey, Boree, Borenore, Bowan Park, Bumbaldry, Bumberry, Byng, Cadia, Canobolas, Canowindra, Cargo, Clergate, Clifton Grove, Cowra, Cudal, Cumnock, Darbys Falls, Emu Swamp, Eugowra, Four Mile Creek, Garra, Gooloogong, Gowan, Gumble, Guyong, Hovells Creek, Huntley, Kangarooie, Kerrs Creek, Koorawatha, Larras Lee, Lewis Ponds, Lidster, Lower Lewis Ponds, Lucknow, Mandagery, Mandurama, Manildra, March, Molong, Moorbel, Mount Collins, Mullion Creek, Murga, Nashdale, Neville, Nyrang Creek, Ophir, Orange, Reids Flat, Roseberg, Shadforth, Spring Creek, Spring Hill, Spring Terrace, Springside, Summer Hill Creek, Toogong, Waldegrave, Wattamondara, Windera, Woodstock and Wyangala.

Bankstown

Bankstown is a metropolitan LAC and covers the suburbs of Bankstown, Bankstown Aerodrome, Bass Hill, Birrong, Chester Hill, Chullora, Condell Park, East Hills, Georges Hall, Greenacre, Lansdowne, Milperra, Mount Lewis, Padstow, Padstow Heights, Panania, Picnic Point, Potts Hill, Revesby, Revesby Heights, Sefton, Villawood and Yagoona.

1 Local Area Commands

Blacktown

Blacktown is a metropolitan LAC and covers the suburbs of Arndell Park, Blacktown, Doonside, Huntingwood, Prospect, Seven Hills and Woodcroft.

Blue Mountains

Blue Mountains is a metropolitan LAC on the edge of Sydney and covers the suburbs and towns of Bell, Blackheath, Blaxland, Blue Mountains National Park, Bullaburra, Faulconbridge, Glenbrook, Hawkesbury Heights, Hazelbrook, Katoomba, Lapstone, Lawson, Leura, Linden, Medlow Bath, Megalong, Mount Irvine, Mount Riverview, Mount Tomah, Mount Victoria, Mount Wilson, Springwood, Sun Valley, Valley Heights, Warrimoo, Wentworth Falls, Winmalee, Woodford and Yellow Rock.

Mount Druitt

Mount Druitt is a metropolitan LAC that covers the suburbs of Bidwill, Blackett, Dharruk, Eastern Creek, Emerton, Glendenning, Hassall Grove, Hebersham, Lethbridge Park, Marsden Park, Minchinbury, Mount Druitt, Oakhurst, Plumpton, Rooty Hill, Ropes Crossing, Shalvey, Shanes Park, St Marys, Tregear, Whalan and Willmot.

Barwon

Barwon is a regional LAC and covers the suburbs and towns of Ashley, Baan Baa, Back Creek, Balfours Peak, Bangheet, Bellata, Berrigal, Bingara, Biniguy, Blue Nobby, Boggabilla, Boggabri, Bohena Creek, Boolcarroll, Boomi, Boonal, Bullarah, Bullawa Creek, Bulyeroi, Bundarra, Collarenebri, Coolatai, Couradda, Crooble, Croppa Creek, Cuttabri, Dinoga, Drildool, Edgeroi, Elcombe, Eulah Creek, Garah, Ginerioi, Gravesend, Gurley, Gwabegar, Harparary, Jacks Creek, Jews Lagoon, Kaputar, Keera, Mallowa, Maules Creek, Merah North, Millie, Moree, Mungindi, Myall Creek, Narrabri, North Star, Nowley, Pallal, Pallamallawa, Pilliga, Riverview, Rocky Creek, Rowena, Spring Plains, Tarriaro, Terry Hie Hie, The Pilliga, Tulloona, Turrawan, Upper Bingara, Warialda, Warialda Rail, Wean, Wee Waa, Weemelah, Yallaro and Yarrie Lake.

St Marys

St Marys is a metropolitan LAC and covers the suburbs of Badgerys Creek, Blue Mountains National Park, Cambridge Gardens, Cambridge Park, Claremont Meadows, Colyton, Erskine Park, Kemps Creek, Kingswo, Luddenham, Mount Vernon, North St Marys, Orchard Hills, Oxley Park, Silverdale, St Clair, St Marys, Wallacia, Warragamba, Werrington, Werrington County and Werrington Downs.

2 Snapshot of the STMP in each Local Area Command

Blacktown (2015FY)

During the 2015 financial year, Blacktown LAC had:

- 21 people on the STMP all but one of whom was male.
- Eight people were categorised as extreme risk, 9 were high risk and four were classified as medium risk.
- Of these 21 people, 14 (66.7%) were identified as of 'Caucasian appearance', four (19.0%) as Aboriginal or Torres Strait Islander, two (9.5%) as of 'African appearance' and one (4.8%) as 'Mediterranean/Middle Eastern Appearance'.
- In Blacktown LAC, there were 17 young people under 25 subject to an STMP, the youngest being 13 years. Over 80% of individuals subject to an STMP were under 25, and only 19% of individuals subject to an STMP were over 25.
- While 19% of the individuals on an STMP were Aboriginal or Torres Strait Islander, only 2% of the total population of Blacktown identify as Aboriginal or Torres Strait Islander.
- Individuals aged 10 – 24 make up just 20% of the population in Blacktown, and make up 80% of the STMP targets.
- 42.2% of the Blacktown population were born overseas, with 37% of the population born in Non-English speaking countries.
- 53.2% of the population was born in Australia with 4.6% not stated. 53.4% of the Blacktown population speaks English at home, 42.6% speak a language other than English at home, with 4% not stated.

Blue Mountains (2015FY)

- During the 2015FY, there were 11 people on an STMP in the Blue Mountains.
- All 11 were male.
- Eight were identified as of Caucasian background, two were listed as Aboriginal and one was of Maori background.
- Most targets were younger men, with seven or 63% of all targets under 25 years of age.
- But overall, STMP targets in the Blue Mountains were slightly older than the average, with the mean age being 25.4 years and oldest person on an STMP aged 48.
- There was a mix of risk categories with four extreme, five high and two medium risk STMP targets.
- In the Blue Mountains, 18% of the population are aged 10 – 24 years of age. In contrast, 63% of all STMP targets were under 25.
- Only 16.5% of the Blue Mountains population were born overseas, with 6.3% being born in a non-English speaking country, 78.1% being born in Australia and 5.3% not stated. 90.4% of the Blue Mountains population speak English at home, with 5.2% speaking a language other than English at home and 4.5% not stated.

Mt Druitt (2015FY)

- In the 2015FY, only one of the 15 individuals subject to an STMP were under 25, which means 66% of the individuals subject to an STMP were under 25.
- Mount Druitt was responsible for the youngest average age of STMP targets across all jurisdictions examined.
- Six or 40% of STMP targets were Aboriginal males, whilst the remaining 9 people on STMP were identified as Caucasian (6), Middle Eastern (2) and Sudanese (1).
- Mount Druitt also had the highest number and percentage of people classified as 'extreme' risk with 14 out of 15 people falling into this risk category.
- While 40% of the STMP targets were Aboriginal males, only 4.5% of the population of the Mount Druitt LAC identify as Aboriginal or Torres Strait Islander.
- Only 24% of the population in Mount Druitt was aged 10 – 24 years of age, compared with 66% of all STMP targets being in that age group.
- 57.4% of the Mount Druitt population speaks English only at home, 37.4% speaks a different language and 5.2% did not respond. 36.9% of the Mount Druitt population was born overseas, with 30.8% being born in a non-English speaking country, 57.1% being born in Australia and 7.1% not stated.

2 Snapshot of the STMP in each Local Area Command

Barwon (2015FY)

In the 2015FY, Barwon had 40 STMP targets, the second highest out of all ten LACS examined.

- Thirty-seven or 92.5% of people subject to the STMP were male, with only 3 women on the STMP over the course of the year.
- A total of 19 targets were considered extreme risk, 15 high risk and 6 were identified as medium risk.
- The longest period for which a person was on an STMP in Barwon was 19.5 months or just over 1.5 years, with the second highest STMP period being 13.5 months. This demonstrates that the Barwon LAC provided statistics for the total time that individuals were subject to an STMP, rather than for just the financial year period, in contrast to the other LACs. Most people had, however, been on an STMP plan for less than 6 months.
- Of the 40 people placed on an STMP in 2014-15, 27 or 67.5% were Aboriginal. A further 15 (37.5%) people were identified as Caucasian, whilst three people were listed as Black African, Pacific Islander and Eastern European respectively.
- In Barwon, 13 of the 40 people on the STMP were under 25, or 32.5%, with the youngest aged 15. It should however be noted that age data was provided for only 39 of 40 STMP targets in the Barwon area.
- Only 17.6% of the Barwon population are aged 10 – 24 years of age, while 32.5% of the STMP targets were in that age bracket.
- Only 13.7% of the population of Barwon identify as Aboriginal or Torres Strait Islander, whereas 67.5% of the individuals placed on an STMP in the 2015FY were Aboriginal or Torres Strait Islander.
- Only 4.8% of the Barwon population were born overseas, with 2.2% of the population being born in non-English speaking countries. 88% were born in Australia, with 7.2% not stated.

St Marys (2015FY)

- In the St Marys LAC, there were 10 males subject to the STMP during the 2015FY.
- Eight, or 80% of the individuals were under 25 years of age.
- The racial background of the 10 STMP targets was as follows: six Caucasian, one Indian, one Middle Eastern and two Aboriginal.
- Two males were subject to an STMP for 12 months, the longest out of all 10 individuals, and the mean period for which people were on an STMP in St Marys was 5.6 months, slightly higher than the overall average.
- Again, most targets were at the higher end of risk categorisations, with four listed as high risk and six as extreme.
- 22% of St Mary's population is aged between 10 and 24 years of age.
- 3.1% of the St Mary's population identifies as Aboriginal or Torres Strait Islander.
- 23.5% of the St Mary's population were born overseas, with 6.6% being born in a non-English speaking country. 71.3% were born in Australia, with 7.3% not stated. 76.2% of the St Marys population speaks English at home, 19.3% speaks a language other than English, with 4.5% not stated.

Redfern LAC (2014 and 2015FYs)

- In the 2014FY, Redfern LAC used the STMP against 39 different people; the second highest out of the 5 LACS examined in that year.
- As at 30 June 2014, Redfern had 11 STMP targets, including one 13-year-old juvenile.
- Six or 55% of these 11 STMP targets were Aboriginal.
- Redfern only had two or 18.2% of targets under 25, being 13 and 20 years of age.
- In the 2015FY, there were 45 people subject to a STMP, 6 more than in the 2014FY and the highest of all LACS in 2015.
- 13 of the 44 people on an STMP for which data was provided (one person's age was not recorded), or 29.5%, were under 25 years of age. The youngest was 13 years old. This compares to 2 of 11 STMP targets being under 25 (aged 13 yrs) as at 30 June 2014.

- Of the 45 people placed on STMP during the 2015FY, 15 (33.3%) were identified as Caucasian and 27 (60.0%) Aboriginal, with the remaining 3 people listed as Black African, Pacific Islander and Eastern European.
- All but one person was male, and most (28 or 62.2%) were categorised as extreme risk.
- The most startling statistic is the high percentage of individuals who identify as Aboriginal who are subject to an STMP, compared with the overall population, because only 2% of individuals in Redfern identify as Aboriginal or Torres Strait Islander, whereas 60% of the individuals subject to an STMP in 2015FY were Aboriginal or Torres Strait Islander, and 55% of the individuals subject to an STMP in the 2014FY were Aboriginal or Torres Strait Islander.
- 58.6% of the population speaks English only at home, 30.4% speaks a different language and 11% did not respond. 40.2% of the population in Redfern were born overseas, with 28.8% being born in non-English speaking countries. 48.8% of the population were born in Australia and 11.8% were not stated.

Parramatta LAC (2014 and 2015FYs)

- In the 2014FY, Parramatta LAC had 13 STMP targets, the smallest number of the five LACs examined in that year.
- Parramatta LAC provided STMP lengths for the total time, rather than just for the year timeframe. Parramatta LAC had an average STMP duration period of 11 months, with one individual having been subject to an STMP for 2 years and 11 months. Six people were subject to the STMP as at 30 June 2014. Four of these people were aged 18, whilst one person was 24 and another aged 39. 83.3% of STMP targets were aged under 25. Of these six STMP targets, two were identified as Australian, one as Middle Eastern, and another as Pacific Islander. The racial background of two further STMP targets were listed as unknown.
- In the 2015FY, there were 10 people on an STMP in Parramatta, five of which were current as at 30 June 2015.
- Nine of the ten people on an STMP were male.
- Eight people were considered extreme risk and two as high.
- 5 or 50% of the targets in the 2015FY were under 25 years of age.
- Of the 10 people on the STMP, two people were identified as Sri Lankan, one was listed as Afghani, three were Caucasians, one was Fijian Indian and one was identified as an Islander. Again, the racial background of two people was not known.
- 1,062 individuals in Parramatta LAC identify as Indigenous, making up 0.9% of the Parramatta population.
- 44.1% of the population speaks English only at home, 49.0% speaks a different language and 6.8% did not respond. 47.8% of the Parramatta population were born in another country, with 43% being born in a non-English speaking country. 45.4% were born in Australia and 6.8% did not state their country of birth.
- 16.9% of the Parramatta population is aged 10 – 24 years of age, compared with 50% of the targets being under 25 years of age.

Orana LAC (2014 and 2015FYs)

- In the 2014FY, of the five LACs examined, Orana had the most STMP targets totalling 40, one more than Redfern.
- Like Redfern, Orana seemed to use the STMP against more people, but for shorter periods of time, although this is not clear as Orana did not provide statistics for the total time that an individual was subject to an STMP.
- Of the 10 STMP targets current at 30 June 2014, 100% were Aboriginal.
- Of these 10 Aboriginal people, four were aged 10, 13, 14 and 16 years and in total Orana had 5 people under 25, or 50%, subject to the STMP. Orana had the most young people out of all five LACS, and also the youngest person subjected to an STMP aged just 10 years.
- In the 2015FY, the number of people on the STMP had dropped to 28, 12 less than the previous year. Two individuals were subject to an STMP for two separate periods, however, the data was disaggregated so it is unclear which individuals these were in the relevant statistics.
- Five (17.9%) were identified as Caucasian and 23 (82.1%) as Aboriginal.
- Six were females and 22 males, the highest number and percentage of women on the STMP out of all 10 LACS analysed.

2 Snapshot of the STMP in each Local Area Command

- Of the 28 people on an STMP during the 2015 year, 15 or 53.6% were under 25 years of age. The youngest person on an STMP in Orana was just 11 years old, again representing the youngest person on STMP during the year out of all jurisdictions examined.
- It is possible that the STMP target identified as 11 years in 2015 is the same young person identified as 10 years in June 2014.
- In Orana, the Aboriginal population is 13.7% of the total population, whereas in the 2014FY, all of the targets were Aboriginal or Torres Strait Islander, and in the 2015FY, 82.1% of the targets were Aboriginal or Torres Strait Islander.
- Young people aged 10 - 24 years of age make up 19.6% of the population, but 50% of the targets in the 2014FY, and 53.6% of the targets in the 2015FY.
- 5.4% of the Orana population were born overseas, and 2.7% were born in a non-English speaking country. 89% were born in Australia and 5.6% were not stated. 92% of the Orana population speak English at home, 2.5% speak a language other than English, and 5.3% were not stated.

Canobolas (2014 and 2015FYs)

- Over the 2014 financial year, Canobolas used the STMP against 14 people, with 8 being current at 30 June 2014.
- Of these 8 STMP targets, all were adults, albeit mostly young adults. Only one target, making up 12.5% of the total targets, were aged under 25 years of age.
- Six or 75% were Aboriginal. The two remaining STMP targets are identified as Caucasian.
- In the 2015FY, Canobolas had 22 people on STMP, all of whom were aged 18 and over. There were seven individuals who were aged under 25 years of age, which made up 31% of the total STMP targets.
- Like all LACs, most STMP targets were male, with only two women subject to the STMP in 2015FY.
- Eight people were identified as Aboriginal, 11 as Caucasian and one as Middle Eastern. A further 12 people were listed as Mediterranean, but this represents 10 more STMP targets than the total identified in Canobolas. It is likely that this was a typographical error on the part of the police and that there are in fact only two people of Mediterranean background on STMP.
- Canobolas was the only LAC with a person categorised as 'low risk' on the STMP. Of the remaining 21 people on STMP, 12 were categorised as extreme risk, 6 as high, and three as medium.
- Aboriginal people make up 5.2% of the Canobolas population, but 36.36% of STMP targets.
- 91.1% of the Canobolas population speak English only, 3.9% speak a language other than English at home and 5% did not state the language spoken at home. 7.7% of the Canobolas population was born overseas, with 3.9% being born in a non-English speaking country. 86.1% of the population was born in Australia, with 6.2% not stated.
- 20% of the Canobolas population is aged 10 – 24.

Bankstown (2014 and 2015FYs)

- In the 2014FY, Bankstown, like Parramatta and Canobolas, imposed the STMP on a relatively small number of people, totalling 15.
- Out of the 6 STMP targets current at 30 June 2014, half were identified as 'Australian born, unknown ethnic origin' and the other half were described as being of Middle Eastern ethnic origin. At least in the Bankstown area, it would appear that STMP is being disproportionately used against people of Middle Eastern background.
- At June 2014, the youngest person subject to the STMP in the Bankstown LAC was 17. There were five individuals aged under 25 subject to an STMP in the 2014FY, or 83.3%.
- In the 2015FY, there were 11 people on STMP in the Bankstown area, with 3 being current at 30 June 2015.
- All people on STMP were male.
- There were also five individuals under 25 years of age subject to an STMP in the 2015FY, or 45.4%. It is possible that the 17-year-old listed in both 2014 and 2015 is the same person.

- Six out of a total of 11 STMP targets were identified as Middle Eastern, again suggesting that STMP disproportionately targets people of Middle Eastern background in the Bankstown area. The racial background of the remaining five people included one person identified as Caucasian, one as East Asian, and one as Indian, whilst the racial background of two people was not recorded.
- In Bankstown, 37.4% of the population was born overseas, with 34.2% being from non-English speaking backgrounds. 56.6% of the population was born in Australia, with 6.1% not stated. 21.2% of the population in Bankstown speaks Arabic at home. This can be compared with half and almost half of the STMP targets being of Middle Eastern origin in Bankstown in the 2014FY and 2015FY.
- 20.8% of the Bankstown population is aged 10 – 24 years of age, as compared with 45.4% of the individuals subject to an STMP being within that age group.
- 40.6% of the population in Bankstown speaks English at home, 53.9% speaks a language other than English at home, with 5.5% not stated.



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